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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 566

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

WILLIAM B. McILVAINE AND JOHN P. WILSON, JR., TRUSTEES UNDER DEED OF TRUST OF JOHN P. WILSON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI NOVEMBER 1, 1935

CERTIORARI GRANTED NOVEMBER 11, 1935

IN THE

United States Circuit Court of Appeals

For the Seventh Circuit

No. 5327

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

WILLIAM B. McILVAINE AND JOHN P. WILSON, JR.,
TRUSTEES UNDER DEED OF TRUST OF JOHN P. WILSON,
Respondents.

Counsel for Petitioner:

MR. FRANK J. WIDEMAN,
MR. SEWALL KEY,

Counsel for Respondents:

MR. CLAY JUDSON,
MR. JOHN P. WILSON,

Petition for Review of Decisions of the United States Board of Tax Appeals.

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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1 William B. McIlvaine and John P. Wilson, Jr., Trustees Under Deed of Trust of John P. Wilson,
Petitioners,
vs.
Commissioner of Internal Revenue,
Respondent.
} Docket No. 52931.

Appearances:
For Taxpayer: John P. Wilson, Esq., Clay Judson, Esq.
For Comm'r.: F. R. Shearer, Esq., E. M. Woolf, Esq.

DOCKET ENTRIES.

1931

Feb. 16—Petition received and filed. Taxpayer notified. (Fee paid)

Feb. 17—Copy of petition served on General Counsel.

Apr. 18—Answer filed by General Counsel.

Apr. 23—Copy of answer served on taxpayer. General Calendar.

1932

Aug. 9—Hearing set for week of Oct. 5, 1932.

Oct. 5—Hearing had before Mr. Seawell, Div. 4 on merits, Consolidated with docket 57226. Stipulation of facts filed. Petitioner's brief due Nov. 15, 1932—reply Dec. 24, 1932. Commissioner's brief due Dec. 10, 1932.

Oct. 19—Transcript of hearing of Oct. 5, 1932 filed.

Nov. 14—Brief filed by taxpayer. 11/14/32 copy served.

Dec. 7—Motion filed by General Counsel for extension to Jan. 10, 1933 to file brief and for petitioner to have to Jan. 24, 1933 for reply. Granted.

1933

Jan. 10—Brief filed by General Counsel.

Jan. 23—Reply brief filed by taxpayer. 1/24/33 copy served.

Nov. 7—Findings of fact and opinion rendered, Mr. Seawell, Div. 4. Order to be entered of no deficiency nor overpayment.

Nov. 9—Decision entered, Mr. Seawell, Div. 4.

1934

Feb. 7—Petition for review by U. S. Circuit Court of Appeals (7) with assignments of error filed by General Counsel.

Feb. 14—Proof of service filed by General Counsel.

Apr. 2—Motion for extension to May 8, 1934 to complete and transmit record filed by General Counsel.

Apr. 2—Order enlarging time to May 8, 1934 for preparation of evidence and transmission and delivery of record entered.

May 4—Motion for extension to June 8, 1934 to complete and transmit record filed by General Counsel.

May 4—Order enlarging time to June 8, 1934 for preparation of evidence and transmission and delivery of record entered.

Jun. 1—Motion for extension to Aug. 8, 1934 to complete and transmit record filed by General Counsel.

Jun. 1—Order enlarging time to Aug. 8, 1934 for preparation of evidence and delivery of record entered.

2 Jul. 2—Statement of evidence lodged.

Jul. 20—Notice of the lodgment of statement with hearing notice 7/18/34 filed.

Jul. 20—Notice changing hearing date to August 1, 1934.

Jul. 20—Praecipe filed—proof of service thereon.

Aug. 2—Statement of evidence approved and ordered filed.

Aug. 1—Hearing had before Mr. Van Fossan (Seawell) on approval of statement of evidence—no objections filed—referred to Mr. Van Fossan.

Aug. 8—Order enlarging time to Sept. 10, 1934 for transmission and delivery of record entered.

5 UNITED STATES BOARD OF TAX APPEALS. Filed Feb. 16, 1931.

William B. McIlvaine and John P. Wilson, Jr., Trustees under Deed of Trust of John P. Wilson,
Petitioners,
vs.
Commissioner of Internal Revenue,
Respondent.
} Docket No. 52931.

PETITION.

Filed Feb. 16, 1931

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency dated December 20, 1930. The said Notice of Deficiency contains no Bureau symbols or other identifying initials. Attached to said Notice of Deficiency, however, is a statement bearing the symbols:

IT:AR:D-1
RMT-60D.

As a basis for their proceeding the petitioners allege as follows:

1. The petitioners are residents of Cook County, in the State of Illinois, and have their principal office at 14 South Dearborn Street, Chicago, Illinois.

6 Petitioners are also fiduciaries in this case as Trustees of the three separate trust estates known as the Martha Wilson Trust, Anna W. Dickinson Trust, and John P. Wilson, Jr. Trust, but designated in the deficiency letter as "Trustees under Deed of Trust of John P. Wilson". The petitioners were acting as Trustees of said three separate trust estates throughout the years 1924, 1925 and 1926, pursuant to the provisions of the trust indenture of March 19, 1913, between said John P. Wilson and said William B. McIlvaine and John P. Wilson, Jr., as amended, first, on the nineteenth day of June A. D. 1919, as amended, second, on the first day of December A. D. 1920, and as last amended on the sixth day of December A. D. 1920; each of said amendments being made pursuant to the power of amendment reserved in the original instrument and by the amendments made from time to time.

2. The Notice of Deficiency (copy of which is attached hereto and marked "Exhibit A") was mailed to the petitioners on December 20, 1930.

3. The taxes in controversy are income taxes for the calendar years 1924, 1925 and 1926. The amount of the taxes in controversy is $45,753.94.

4. The determination of the tax set forth in said Notice of Deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in finding that the action of the Trustees in filing separate re-
7 turns for the Martha Wilson Trust, Anna W. Dickinson Trust, and John P. Wilson, Jr. Trust was improper, and in holding that the income reported on said three separate trusts should have been included in each year on a single return, showing the undistributed income as taxable to these three trusts considered as a single trust.

(b) The assessment of an additional tax pursuant to said Notice of Deficiency is barred by the statute of limitations. No waiver of the statute has ever been filed by said William B. McIlvaine and John P. Wilson, Jr. "as Trustees under Deed of Trust of John P. Wilson".

(c) Even if the Commissioner of Internal Revenue is right in his contention that there is only one trust in this case, he, nevertheless, has erred in failing to allow the petitioners credit for the taxes paid in each of the three years in question as Trustees of each of the three separate trust estates, namely, the Martha Wilson Trust, Anna W. Dickinson Trust, and John P. Wilson, Jr. Trust. In any case the same income is involved and the tax has already been paid on that income. If the income of the separate trusts ought to be combined and not reported separately, as the Commissioner contends and as the petitioners deny, then, since it is in any case the same income, the Commissioner of Internal Revenue must allow full credit for all the taxes paid in 1924, 1925 and 1926 by said William B. McIlvaine and John P. Wilson, Jr. in their capacity as Trustees of each of said separate trust estates.

8 (d) The Commissioner of Internal Revenue erred in finding that the petitioners had income subject to tax in the year 1924 in the sum of $109,877.13.

(e) The Commissioner of Internal Revenue erred in finding that there was a deficiency in tax due from the petitioners for the year 1924 in the sum of $20,949.69.

(f) The Commissioner of Internal Revenue erred in find-

ing that the petitioners had income subject to tax in the year 1925 in the sum of $119,596.97.

(g) The Commissioner of Internal Revenue erred in finding that there was a deficiency in tax due from the petitioners for the year 1925 in the sum of $13,758.96.

(h) The Commissioner of Internal Revenue erred in finding that the petitioners had income subject to tax in the year 1926 in the sum of $112,230.92.

(i) The Commissioner of Internal Revenue erred in finding that there was a deficiency in tax due from the petitioners for the year 1926 in the sum of $11,045.29.

5. The facts upon which the petitioners rely as the basis for this proceeding are as follows:

(a) The instrument under which said William B. McIlvaine and John P. Wilson, Jr. acted as Trustees, insofar as the income sought to be taxed against these petitioners is concerned, provided for three separate and distinct trusts, to be known respectively as the Martha Wilson Trust, the Anna W. Dickinson Trust, and the John P. Wilson, Jr. Trust. A copy of the said instrument which is composed of the original trust indenture and all amendments thereto is hereby attached as "Exhibit B" and made a part hereof.

9

On March 19, 1913, John P. Wilson (the father of John P. Wilson, Jr.) set up a trust with said William B. McIlvaine and John P. Wilson, Jr. as Trustees for the benefit of his three children, Martha Wilson, Anna W. Dickinson, and John P. Wilson, Jr. The trust deed contained the following provision:

"Any of the provisions of this indenture may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries hereinbefore named, or the survivors or survivor of them which shall be delivered to the said Trustees or one of them, provided, however, that such instrument must be approved in writing by the said party of the first part, if made during his life, and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form."

The three beneficiaries named were as above stated the

three children of said John P. Wilson, namely, Martha Wilson, Anna W. Dickinson, and John P. Wilson, Jr.

On the 19th day of June A. D. 1919, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the Trustees, the said trust deed of March 19, 1913 was duly amended by provisions reading in part as follows:

"First: The trust estate now held under said Trust Deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interests and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said Indenture over one third (1/3) of said trust estate and the income thereof, except as may be otherwise specifically provided herein.

Second. Distribution of Income.

Any and all additions to the trust estate held under said Indenture (other than additions from the accumulation of income from the separate trust estates held under said Indenture) shall be divided between said separate trust estates held under said Indenture in equal shares or parts, except and unless it shall be otherwise directed in the instrument of gift making an addition to the trust estate held under said Indenture.

Third. The net income of each of the three trust estates held under said Indenture shall be paid over in whole or in part to the beneficiary or beneficiaries from time to time entitled to share therein, as and when the Trustees acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing, signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid, shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the said Trustees.

In the event of the death of John P. Wilson, Jr. his wife, Alice B. Wilson, may sign any such request or direction for the distribution of said net income in his place, with like

effect as though he were living and had signed the same; and in the event of the death of Anna W. Dickinson her husband, William R. Dickinson, may sign any such request or direction for the distribution of said net income in her place, with like effect as though she were living and had signed the same.

11 "In the event of the death of any of said original beneficiaries named in said Indenture, the net income from the trust estate held under said Trust Indenture, which such deceased beneficiary would have been entitled to receive if living, shall be paid over and distributed to the issue of the said grantor, John P. Wilson, in accordance with any directions given by such beneficiary in and by his or her last will and testament; and in default of any such direction or appointment, then to the issue surviving from time to time, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the issue surviving, from time to time, of the said grantor, John P. Wilson, per stirpes.

Fourth. Distribution of the Principal of the Trust Estate. Upon the termination of the trusts established by said Indenture, the several trust estates held thereunder shall be paid over and distributed as follows:

The several trust estates held in trust under said Indenture for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living the trust estate which such deceased beneficiary would have been entitled to receive if living shall be paid over and distributed to the then surviving issue of said grantor, John P. Wilson, in such shares and interests, and subject to such trusts, as may be directed in and by the last will and testament of such deceased beneficiary; and in default of any such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary per stirpes; and in default of such surviving issue, then to the surviving issue of the said grantor, John P. Wilson, per stirpes."

On December 1, 1920, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the Trustees, said trust indenture as theretofore amended was again amended in part as follows:

12 "By striking out the first paragraph of the Third Article or Section of the instrument in writing dated the

19th day of June, A. D. 1919, signed by Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, altering and changing the said Trust Indenture dated the 19th day of March, A. D. 1913, which said paragraph so stricken out reads as follows:

'Third. The net income of each of the three trust estates held under said Indenture shall be paid over in whole or in part to the beneficiary or beneficiaries from time to time entitled to share therein, as and when the Trustees acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing, signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid, shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the said Trustee.'

and inserting in the said instrument dated the 19th day of June, A. D. 1919, in lieu of the paragraph so stricken out, the following paragraph, viz:

'Third. The said Trustees shall in each year pay out as much of the net income from each of the said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate, as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustees shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be
13 'made in equal amounts from each of said separate trusts, and the Trustees shall not be under any obligation to inquire as to the nature of the uses for which said pay-

ments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid.' "

On December 6, 1920, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the Trustees, said trust indenture as theretofore amended was again amended in part as follows, viz: By changing and altering Articles III and IV of said indenture so that the same from and after the date of delivery of said amendment to said Trustees was in force and read in part as follows:

"Article III.

(1) The trust funds and estate held under this Trust Indenture shall be kept divided by said Trustees into three (3) equal parts, each of which shall be held and administered as a separate trust for the benefit respectively of one of the three children of said party of the first part, hereinbefore named, subject, however, to the conditions, limitations and provisions hereinafter set forth.'

A separate account shall be kept by the said Trustees of each of said trusts, and the investments in each of said separate trusts shall at all times be kept the same, both in kind and quantity, as near as may be, and to that end joint investments may be made by the Trustees on behalf of said separate trusts, each trust contributing an equal amount of the funds used in making such joint investments.

Any and all additions to the trust estate held under this Indenture (other than those from the accumulation of income from the separate trust estates) shall be divided between said separate trust estates held under this Indenture, in equal shares or parts, except and unless it shall be otherwise directed in the instrument of gift making an addition to the trust estate held under this Indenture.

* * * * * *

14 "(2) The said Trustees shall in each year pay out as much of the net income from each of said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net in-

come from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustees shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustees shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid.

Any request in writing for the distribution of any part of the income of any of said trusts may be signed by the guardian of any beneficiary who may be a minor or under disability, with life effect as though such request had been signed by the beneficiary in person, free from disability.

(3) From and after the death of any one of the original beneficiaries under this Indenture, the net income which he or she would have been entitled to receive if living, shall be paid to the issue of said party of the first part, in accordance with any directions in regard thereto contained in the last will and testament of such deceased beneficiary, and in default of any such direction or appointment then to the issue surviving from time to time, if any, of such deceased beneficiary, per stirpes; and in default of such issue then to the issue surviving from time to time of the said party of the first part, per stirpes.

15 "Article IV.

Distribution of Principal of Trust Estate.

* * * * * *

"(2) Upon the termination of the trust established by this Indenture, the several trust estates then held hereunder for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson shall be paid over, conveyed and delivered to them respectively. But if any of said

beneficiaries shall not then be living, the trust estate which such deceased beneficiary would have been entitled to receive, if living, shall be paid over and delivered to the then surviving issue of the said party of the first part, in such shares and interests and subject to such trusts as may be directed in and by the last will and testament of such deceased beneficiary; and in default of any such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary, per stirpes; and in default of such surviving issue, then to the surviving issue of the said party of the first part, per stirpes."

(b) It is apparently the contention of the Commissioner of Internal Revenue that said William B. McIlvaine and John P. Wilson, Jr., as Trustees under said Deed of Trust of John P. Wilson, is an entirely different entity from either said William B. McIlvaine and John P. Wilson, Jr. as Trustees of the Martha Wilson Trust, or said William B. McIlvaine and John P. Wilson, Jr. as Trustees of the Anna W. Dickinson Trust, or said William B. McIlvaine and John P. Wilson, Jr. as Trustees of the John P. Wilson, Jr. Trust. At least such a contention is the only one which is consistent with the failure of the Commissioner of Internal Revenue to give the petitioners herein, namely, said William B. McIlvaine and John P. Wilson, Jr., as Trustees under said Deed of Trust of John P. Wilson, any credit for taxes paid by said William B. McIlvaine and John P. Wilson, Jr. as Trustees of the Martha Wilson Trust, said William B.
16 McIlvaine and John P. Wilson, Jr. as Trustees of the Anna W. Dickinson Trust, or said William B. McIlvaine and John P. Wilson, Jr. as Trustees of the John P. Wilson, Jr. Trust. The Commissioner of Internal Revenue holds no waiver of the statute of limitations executed by said William B. McIlvaine and John P. Wilson, Jr. as Trustees under said Deed of Trust of John P. Wilson, any waivers which may have been filed having been in the names of said William B. McIlvaine and John P. Wilson, Jr. as Trustees of the Martha Wilson Trust, or William B. McIlvaine and John P. Wilson, Jr. as Trustees of the Anna W. Dickinson Trust, or William B. McIlvaine and John P. Wilson, Jr. as Trustees of the John P. Wilson, Jr. Trust. The period within which this additional assessment may be made has long since expired, since the returns covering the very income here in question for the years 1924 and 1925 were filed more than four years prior to Decembe 20, 1930, and the returns covering the income here in question for the year 1926 were filed more than

three years prior to December 20, 1930. The Commissioner of Internal Revenue having accepted the taxes paid by said William B. McIlvaine and John P. Wilson, Jr., as Trustees of each of said separate trust estates, on the very same income here in question, is now, long after the period when any claim for refund can be filed on behalf of those trusts, asserting for the first time that said William B. McIlvaine and John P. Wilson, Jr. as Trustees under Deed of Trust of John P. Wilson owe and must pay all over again the tax at a higher rate on this identical income without any credit whatsoever being given for the taxes already paid.

17 The facts in this case present a perfect estoppel against the Commissioner of Internal Revenue.

In this connection attention is called to the fact that for many months the Commissioner of Internal Revenue contended that all of the income of all of these separate trusts, whether distributed or not, should be taxed to the beneficiaries individually, and the Commissioner of Internal Revenue attempted to assess additional taxes against the individuals on that basis, at the same time offering to refund the taxes paid by the Trustees.

On December 22, 1930, the Commissioner of Internal Revenue advised Mr. John P. Wilson, Jr., the beneficiary of the John P. Wilson, Jr. Trust, that as a result of the conference which was held in Washington on January 9, 1930, relative to the adjustment of his income taxes for the years 1924, 1925 and 1926, "this office has now conceded your contention that you are taxable only on such amounts of income as were actually distributed to you from the various trusts of which you were a beneficiary, and accordingly the deficiencies proposed for the years in question will not be assessed".

The Commissioner of Internal Revenue never, prior to the sixty-day deficiency letter, to obtain relief from which this petition is filed, indicated that he was contemplating taxing all three of these separate trusts as though they were one trust.

18 (c) Said William B. McIlvaine and John P. Wilson, Jr. as Trustees of the Martha Wilson Trust, as Trustees of the Anna W. Dickinson Trust, and as Trustees of the John P. Wilson, Jr. Trust, paid taxes for the years 1924, 1925 and 1926 for those trusts respectively, as shown in the following table:

	1924	1925	1926
Martha Wilson Trust	$2,509.96	$2,248.83	$2,118.39
Anna W. Dickinson Trust	2,509.96	2,248.83	2,118.39
John P. Wilson, Jr. Trust	2,509.96	2,248.83	2,118.39

The income which the Commissioner of Internal Revenue is endeavoring to tax in the deficiency letter, against which this petition is filed, is exactly the same income on which William B. McIlvaine and John P. Wilson, Jr. paid the taxes as above listed in the taxable years 1924, 1925 and 1926. Nevertheless, the Commissioner of Internal Revenue has not credited the petitioners with the payment of said taxes. In other words, the Commissioner of Internal Revenue accepted taxes from William B. McIlvaine and John P. Wilson, Jr. as Trustees of the three separate trusts listed above for the years 1924, 1925 and 1926, and now, after the statute of limitations has expired so that no claim for refund of said taxes can be filed, the Commissioner of Internal Revenue suddenly takes the position that they are not three separate trusts but only a single trust, and hence he tries to
19 tax the same income all over again at a higher rate without giving any credit whatsoever for the taxes which were paid in good faith by these petitioners and accepted without question by the Commissioner of Internal Revenue.

Wherefore, the petitioners pray that this Board may hear this case and determine that there is no tax due from the petitioners herein for the years 1924, 1925 and 1926.

(Signed) JOHN P. WILSON,
(Signed) CLAY JUDSON,
Attorneys for Petitioners.

WILSON, MCILVAINE, HALE & TEMPLETON,
Of Counsel.

State of Illinois }
County of Cook } ss.

WILLIAM B. McILVAINE and JOHN P. WILSON, JR., being first duly sworn, say that they have read the foregoing Petition and are familiar with the statements contained therein, and that the facts stated are true.

(Signed) WILLIAM B. MCILVAINE,
(Signed) JOHN P. WILSON, JR.

Subscribed and Sworn to before me this 14th day of February, A. D. 1931.

WM. B. MCILVAINE, JR.,
(Seal) *Notary Public.*

NP-2-26

20 "EXHIBIT A".

Treasury Department
Washington

Office of
Commissioner of Internal Revenue

Dec 20 1930

Messrs. Wm. B. McIlvaine and John P. Wilson, Jr.,
Trustees under deed of Trust of John P. Wilson,
140 South Dearborn Street,
Chicago, Illinois.

Sirs:

You are advised that the determination of your tax liability for the year(s) 1924, 1925 and 1926 discloses a deficiency of $45,753.94, as shown in the statement attached.

In accordance with section 274 of the Revenue Act of 1926, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, If You Do Not Desire To Petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return(s) by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or on the date assessment is made, whichever is earlier; Whereas If No Agreement Is Filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully,
DAVID BURNET,
Commissioner.
By M. T. SHERWOOD,
Acting Deputy Commissioner.

Enclosures;
Statement
Form 882
Form 870

21 Statement.

IT:AR:D-1
RMT-60D

In re: Messrs. Wm. B. McIlvaine and John P. Wilson, Jr., Trustees under deed of Trust of John P. Wilson.
140 South Dearborn Street,
Chicago, Illinois.

Tax Liability.

Years	Correct Tax Liability	Tax Previously Assessed	Deficiency
1924	$20,949.69	None	$20,949.60
1925	13,758.96	None	13,758.96
1926	11,045.29	None	11,045.29
Totals	$45,753.94	None	$45,753.94

A review of the reports of the internal revenue agent in charge at Chicago, Illinois, covering the tax liability of the trusts of Anna W. Dickinson; Martha Wilson and John Wilson, discloses the same to be correct as submitted with the following exceptions:

For each of the years 1924, 1925 and 1926 the examining officer disallowed deductions of $4,182.82, $4,173.70 and $4,288.04, respectively, which were claimed as depreciation, for the reason that there was no income taxable to the trust against which it could be claimed and in accordance with IT 2218 Cumulative Bulletin IV02, page 61, such deductions were not allowable. In view of adjustments now proposed, the trust of John P. Wilson reflects income taxable to such trust and the deductions in question have accordingly been allowed.

Relative to the increase of $200.00 in profit from sales of real estate on each of the above-named trusts for the year 1926 that resulted from the failure of the trusts to consider depreciation in computing the profit from such sale, you are advised that this adjustment has been approved by this office, thus increasing the income originally reported by each trust for 1926 by $200.00 or an aggregate of $600.00.

In this connection, however, this office holds that the action of the trustees in filing separate returns for each of the above-

mentioned trusts was erroneous and that the income reported thereon should have been included in each year on a single return, form 1041 filed by the trustees of the trust created by John P. Wilson under deed of trust dated March 19, 1913, the distribution to the beneficiaries of the trust being shown thereon, and a form 1040, showing the undistributed income filed to reflect the income taxable to the trust as an entity.

In arriving at the above conclusion you are advised that despite the modification of the original trust agreement dated March 19, 1913, and as a result of which you have proceeded on the theory that three separate trusts were created, this office is of the opinion that there is nothing in the amendments to the trust which justifies the conclusion that by such amendments there were created three separate and distinct trusts in lieu of the one theretofore effective.

In view of the above, returns for the trust on forms 1041 and 1040 for the years 1924, 1925 and 1926 have been prepared under the provisions of section 3176 of the revised statute and the tax computed thereon as shown below:

1924

Net income originally reported		None
Add:		
1. Ordinary income from John P. Wilson Trust		$ 48,430.65
2. Dividends from John P. Wilson Trust.....		51,933.48
		$100,364.13
3. Capital net gain from John P. Wilson Trust		9,513.00
Total corrected income taxable to trust.....		$109,877.13
Less:		
Capital net gain.....		9,513.00
Corrected net income subject to surtax.....		$100,364.13
Less:		
Dividends	$51,933.48	
Personal exemption	1,000.00	52,933.48
		$ 47,430.65

23 Amount brought forward	$47,430.63	
Normal Tax at 2%	4,000.00	80.00
	$43,430.63	
Normal tax at 4%	4,000.00	160.00
Normal tax at 6%	$39,430.65	2,365.84
Surtax on $100,364.13		17,154.73
Tax at 12½% on $9,513.00 capital net gain		1,189.12
Total tax		$ 20,949.69
Tax previously assessed		none
Deficiency		$ 20,949.69

Explanation of Changes.

1, 2 and 3. Undistributed income from the trust of John P. Wilson taxable to the trust as an entity has been included as income as explained above.

1925

Net income originally reported		none
Add:		
1. Ordinary income from John P. Wilson Trust		$ 17,539.72
2. Dividends from John P. Wilson Trust		68,112.07
3. Capital net gain from John P. Wilson Trust		33,945.18
Total corrected income		$119,596.97
Less:		
Capital net gain		33,945.18
Corrected net income subject to surtax		$ 85,651.79
Less:		
Dividends	$ 68,112.07	
Personal exemption	1,500.00	69,612.07
		$ 16,039.72

24 Amount brought forward	$ 16,039.72	
Normal tax at 1½%	4,000.00	60.00
	$ 12,039.72	
Normal tax at 3%	4,000.00	120.00
Normal tax at 5%	$ 8,039.72	401.97
Surtax on $85,651.79		8,933.84
Tax at 12½% on $33,945.18		4,243.15
Total tax liability		$ 13,758.96
Tax previously assessed		none
Deficiency		$ 13,758.96

Explanation of Changes.

1, 2 and 3. Same as for the year 1924.

1926

Net income originally reported		none
Add:		
1. Dividends from John P. Wilson Trust		$ 63,326.58
2. Capital net gain from John P. Wilson Trust		48,904.34
Total corrected income		$112,230.92
Less:		
Capital net gain		48,904.34
Corrected net income subject to surtax		$ 63,326.58
Less:		
Dividends	$ 63,326.58	
Personal exemption	1,500.00	64,826.58
		none
Surtax on $63,326.58		$ 4,932.25
Tax at 12½% on capital net gain of $48,904.34		6,113.04
Total tax assessable		$ 11,045.29
Tax previously assessed		none
Deficiency		$ 11,045.29

Explanation of Changes.

1 and 2. Same as for 1924.

Payment of the tax should not be made until a bill is received from the collector of internal revenue for your district and remittance should then be made to him.

25 "EXHIBIT B."

This Indenture, Made this 19th day of March, A. D. 1913, by and between John P. Wilson, of the City of Chicago, County of Cook and State of Illinois, the party of the first part, and John P. Wilson, Jr., and William B. McIlvaine, hereinafter termed the Trustees, of Cook County, in the State of Illinois, the parties of the second part, Witnesseth:

Article I.

The party of the first part, being desirous of establishing and creating the trust hereinafter mentioned for the purposes and upon the terms set forth, does hereby sell, assign, transfer and set over unto the Trustees, as joint tenants and not as tenants in common, the following shares of stock and the certificates (in each case endorsed in blank for transfer) representing and evidencing the said shares of stock and the right thereto, and also the bonds and notes hereinafter described, to wit:

43925 shares of the capital stock of The Goldfield Consolidated Mines Company;

42½ shares of the Maywood Land Association;

20 shares of the capital stock of the Machinery Designing and Manufacturing Company;

25 shares of the Broadview Land Association;

187½ common shares of The Equitable Land Association of Chicago;

250 preferred shares of The Equitable Land Association of Chicago;

3 6% first mortgage gold bonds of the Proviso Land Association, due November 1, 1920; face value $1000 each;

2 4% first mortgage gold bonds of Chicago Polyclinic, face value $500 each; due July 1, 1935;

25 4% Consolidated mortgage gold bonds of Chicago Herald Company, face value $1000 each; due April 1, 1921;

2 notes of Frederick Crumbaugh, both dated November 1, 1910; each for $1250 with interest at the rate of 7% per annum; one due three years after date and the other four years after date.

Note of Iretus R. Krum, dated December 9, 1905, for $20,000, with interest at the rate of 5% per annum; due three years after date.

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and the Trustees are hereby authorized to receive and accept any and all moneys, bonds, notes, shares of stock and other securities which at any time and from time to time, by delivery or by writing of any kind, may be transferred or assigned to the Trustees to become a part of the principal of the trust estate which, together with any income therefrom accumulated, as hereinafter provided, is to be held and disposed of, together with the proceeds thereof, subject to the terms of this agreement.

Article II.

The Trustees shall have power and authority at any time and from time to time

(1) To receive and collect all dividends declared and paid upon any shares of stock at any time subject thereto, and the interest upon all moneys, bonds or other obligations at any time held by them hereunder, and to receive any and all sums at any time payable in respect to any shares of stock, bonds or other obligations or securities which are subject to the provisions of this agreement;

(2) To sell, transfer and assign any or all of the stocks, bonds, obligations, securities or property held by said Trustees under this instrument, and to invest and reinvest the proceeds thereof and the net income derived therefrom which shall not be distributed as hereinafter provided in accordance with any directions given in writing signed by any two of the following persons, viz: John P. Wilson, Jr., Martha Wilson and Anna W. Dickinson, all of Chicago. No change shall be made by said Trustees in the securities or obligations held in trust by them without the written direc-

26 3

tion or approval of two of the persons above named, and said Trustees shall be authorized to make any and every change in the securities or obligations held in trust which shall be di-

rected or approved as aforesaid, and said Trustees shall be free from any liability or responsibility for any action taken by them which shall be done under or in pursuance of any such written direction or approval. In no event shall any purchaser from the Trustees, or any other person or corporation, be required to ascertain the authority and power of the Trustees to make any sale of any securities or any transfer, assignment or delivery thereof, but such purchaser and all other parties shall be entitled to rely upon the delivery or transfer or assignment of any such securities by the Trustees as having been in all respects fully authorized, and shall not be affected by any notice to the contrary or be required to see to the application of the purchase money.

(3) To exercise the voting power upon all shares of stock held by the Trustees hereunder and to exercise every power, election and discretion, give every notice, make every demand and do every act and thing in respect of any shares of stock and bonds or other obligations and securities held by the Trustees hereunder which they could or might do if they were the absolute owners thereof.

Article III.

Distribution and Application of Income.

The net income derived from said Trust Estate shall be retained by said Trustees and accumulated, and be added to the principal of said Trust Fund for a period of

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fifteen (15) years from the date of this indenture unless said period of accumulation shall be shortened by an instrument in writing signed by the three children of said first party, viz: John P. Wilson, Jr., Martha Wilson and Anna W. Dickinson, or the survivors or survivor of them, and that no such instrument shall be affective to shorten said period of accumulation during the life of said party of the first part without his written approval endorsed thereon, and from and after the termination of said period of accumulation of said income, said net income as and when received by the Trustees shall be distributed, paid over and applied by the Trustees as follows:

(1) One-third (1/3) thereof shall be paid over and distributed to each of the three children of the party of the first part, hereinbefore named, so long as they shall severally live.

(2) From and after the death of either of said beneficiaries his or her one-third of said net income shall be paid over and distributed in accordance with any directions contained in his or her last will and testament, and in default of any such directions, then to the surviving issue, if any, of such deceased child, and in default of such issue then to the beneficiaries entitled to participate in the other two-thirds of said income pro rata.

Article IV.

Distribution of Principal of Trust Estate.

The trust hereby created shall in any and the latest event terminate at the death of the survivor of

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Martha Wilson, John P. Wilson, Jr. and Anna W. Dickinson, and said trust may be terminated in whole or in part at any time by an instrument in writing signed by the said three children of the first party, or the survivors or survivor of them, upon the delivery of such written instrument to the said Trustees, provided, however, that during the life of said first party such written instrument must have the written approval of said first party.

Upon the termination of said trust the trust estate then in the hands of said Trustees shall be paid over and distributed as follows:

(a) One third (1/3) thereof to each of the three children of said first party, hereinbefore named, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson;

(b) If either of said three children shall not then be living his or her one third of said trust estate shall be paid over and distributed in accordance with the provisions of his or her last will and testament, the same in all respects as though it had formed a part of his or her estate at the time of his or her death, and in default of any disposition thereof by will as aforesaid, then said one third of said trust estate shall vest in his or her surviving issue, if any, per stirpes, and in default of such issue the same shall be paid over and distributed to my lawful issue then surviving per stirpes.

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Article V.

Concerning the Trustees.

The Trustees hereby accept the trust created by this Indenture, and agree to act in accordance with the terms and provisions of said indenture, but only upon and subject to the following terms and conditions, which are hereby agreed to by the party of the first part, for himself, his heirs and his legal representatives, and by each and every beneficiary accepting or receiving or claiming any benefit or right under or by virtue of this indenture, to wit:

The Trustees shall be reimbursed and indemnified against any and all liability, loss or expense because of the holding of any shares of stock or other securities constituting a part of the principal of the trust estate, and shall have a lien upon the principal of the trust estate and the income therefrom for the amount of any liability, loss or expense which may be so incurred by them, including the expense of defending any action or proceeding instituted against them by reason of any such holding.

Out of the income of the principal of the trust estate, the Trustees shall pay all taxes, assessments or other governmental charges which they may be required to pay or to retain because or in respect of any part of the principal of the trust estate or the income therefrom or the interest of the Trustees therein or the interest of any beneficiary or other person therein, under any present or future law of the United States, or of any state, county, municipality or other taxing authority therein.

The Trustees shall be entitled before making any such payment or distribution, to deduct from the amount of

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the income in their hands the amount then accrued and due to them for their reasonable compensation and the reasonable expense incurred by them in and about the administration of the trust, including the compensation of counsel, and any loss or expense to which they may have been subject, as aforesaid, and the amount of any taxes, assessments or other governmental charges which they may have been required to pay in the premises.

The Trustees shall not in any event be liable to any party in interest or to any person whatsoever save only each for his own wilful default.

The said Trustees or either of them may resign at any time by giving notice in writing of such resignation to said first party while he shall live, and after his death by giving notice in writing of such resignation to his cotrustee or to the beneficiaries hereinbefore named, or to the survivors or survivor of them.

In case of the resignation of the Trustees or of either of them, or of a vacancy in said trusteeship occurring in any way, the said party of the first part, if living, shall have power to appoint a successor in trust by an instrument in writing delivered to the said Trustees or either of them, and after the death of said first party the three beneficiaries hereinbefore named, or the survivors or survivor of them, shall have power to appoint a successor in like manner, and upon the appointment of a successor in trust the said Trustees shall assign, transfer and deliver to the successor or successors in trust all of the trust estate then in their hands, and thereupon and thereafter the acting Trustees shall have all the rights, powers, duties and au-

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thority which are granted to or imposed upon said original Trustees under the provisions of this indenture.

Any of the provisions of this indenture may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries hereinbefore named, or the survivors or survivor of them which shall be delivered to the said Trustees or one of them, provided, however, that such instrument must be approved in writing by the said party of the first part, if made during his life, and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form. The Trustees and each of them shall be free from any responsibility or liability for any act done by them (including any disposition in whole or in part of the trust estate) in pursuance of the written direction of any two of the beneficiaries hereinbefore named, provided such instrument shall be ap-

proved by said first party if executed and delivered during his life.

The beneficiaries, or any or either of them, may act through an attorney in fact in signing any and all instruments delivered to the Trustees under this indenture, with like effect as though signed in person, and any or either of said beneficiaries may act as such attorney in fact when authorized to do so.

In Witness Whereof the parties have hereunto set

19 9

their hands and seals the day and year first above written.

JOHN P. WILSON (Seal)
WILLIAM B. MCILVAINE (Seal)
JOHN P. WILSON, JR., (Seal)

State of Illinois, } ss.
County of Cook. }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John P. Wilson, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 19th day of March, A. D. 1913.

EDWIN L. JOHNSON,
Notary Public.

(Notarial Seal)

State of Illinois, } ss.
County of Cook. }

I, Edwin L. Johnson, a

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Notary Public in and for said County, in the State aforesaid, do hereby certify that John P. Wilson, Jr., personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 19th day of March, A. D. 1913.

EDWIN L. JOHNSON
Notary Public.

(Notarial Seal)

State of Illinois, } ss.
County of Cook. }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that William B. McIlvaine, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 19th day of March, A. D. 1913.

EDWIN L. JOHNSON
Notary Public.

(Notarial Seal)

30 7912470

State of Illinois } ss No
Cook County }

Filed for Record
1923 May 3 A M 11 54
And Recorded in Book 18556 of Records Page 571
JOSEPH F. HAAS
Recorder

31 To John P. Wilson, Jr., and William B. McIlvaine, as Trustees under a certain Indenture dated the 19th day of March, A. D. 1913, wherein John P. Wilson, of the City of Chicago, was the party of the first part, and John P. Wilson, Jr. and William B. McIlvaine, as Trustees, were parties of the second part:

We, the undersigned, being the three children of John P. Wilson, the grantor in said Indenture dated the 19th day of March, A. D. 1913, in pursuance of the power in us vested by the said Indenture, do hereby alter, change, and modify the said Indenture or Trust Deed as follows, viz:

First. The trust estate now held under said Trust Deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares

shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interests and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said Indenture over one third (1/3) of said trust estate and the income thereof, except as may be otherwise specifically provided herein.

Second. Distribution of Income.

Any and all additions to the trust estate held under said Indenture (other than additions from the accumulation of income from the separate trust estate held under said Indenture) shall be divided between said separate trust estates held under said Indenture in equal shares or parts, except and unless it shall be otherwise directed in the instrument of gift making an addition to the trust estate held under said Indenture.

Third. The net income of each of the three trust

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estates held under said Indenture shall be paid over in whole or in part to the beneficiary or beneficiaries from time to time entitled to share therein, as and when the Trustees acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing, signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid, shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the said Trustees.

In the event of the death of John P. Wilson, Jr. his wife, Alice B. Wilson, may sign any such request or direction for the distribution of said net income in his place, with like effect as though he were living and had signed the same; and in the event of the death of Anna W. Dickinson her husband, William R. Dickinson, may sign any such request or direction for the distribution of said net income in her place, with like effect as though she were living and had signed the same.

In the event of the death of any of said original beneficiaries named in said Indenture, the net income from the trust estate held under said Trust Indenture, which such

deceased beneficiary would have been entitled to receive if living, shall be paid over and distributed to the issue of said grantor, John P. Wilson, in accordance with any directions given by such beneficiary in and by his or her last will and testament; and in default of any such direction or appointment, then to the issue surviving, from time to

32 3

time, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the issue surviving, from time to time, of the said grantor, John P. Wilson, per stirpes.

Fourth.—Distribution of the Principal of the Trust Estate.

Upon the termination of the trusts established by said Indenture, the several trust estates held thereunder shall be paid over and distributed as follows:

The several trust estates held in trust under said Indenture for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living the trust estate which such deceased beneficiary would have been entitled to receive if living shall be paid over and distributed to the then surviving issue of said grantor, John P. Wilson, in such shares and interests, and subject to such trusts, as may be directed in and by the last will and testament of such deceased beneficiary; and in default of any such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary per stirpes; and in default of such surviving issue, then to the surviving issue of the said grantor, John P. Wilson, per stirpes.

Fifth. All the provisions of the said Trust Indenture (including the power to modify, alter and change the said Indenture as the same shall be in force after the delivery of this instrument to the said Trustees), except as the same are expressly or necessarily modified or altered by

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the terms of this instrument, shall remain and continue in full force and effect.

In Witness Whereof we have hereunto set our hands and seals, this 19th day of June, A. D. 1919.

MARTHA WILSON (Seal)
JOHN P. WILSON JR (Seal)
ANNA W. DICKINSON (Seal)

State of Illinois, } ss.
County of Cook. }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this Nineteenth day of June, A. D. 1919.

EDWIN L. JOHNSON
Notary Public.

(Notarial Seal)

I approve the foregoing instrument and the changes thereby made.

JOHN P. WILSON.

June 19—1919.

33 7912471

State of Illinois } ss No
Cook County }

Filed for Record
1923 May 3 AM 11 55

And Recorded in Book 18556 of Records Page 578

JOSEPH F. HAAS
Recorder

34 To John P. Wilson, Jr. and William B. McIlvaine, Trustees under a Trust Indenture dated the 19th day of March, A. D. 1913, wherein John P. Wilson, of the City of Chicago, was the party of the first part, and John P. Wilson, Jr. and William B. McIlvaine, as Trustees, were parties of the second part:

You are hereby notified that we, Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, being the three children of John P. Wilson, the grantor in said Indenture dated the 19th day of March, A. D. 1913, in pursuance of the power in us vested by the said Indenture, do hereby alter, change

and modify the said Indenture or Trust Deed as heretofore amended and now in force as follows, viz:

By striking out the first paragraph of the Third Article or Section of the instrument in writing dated the 19th day of June, A. D. 1919, signed by Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, altering and changing the said Trust Indenture dated the 19th day of March, A. D. 1913, which said paragraph so stricken out reads as follows:

"Third. The net income of each of the three trust estates held under said Indenture shall be paid over in whole or in part to the beneficiary or beneficiaries from time to time entitled to share therein, as and when the Trustees acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing, signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid, shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the said Trustee."

and inserting in the said instrument dated the 19th day of June, A. D. 1919, in lieu of the paragraph so stricekn out, the following paragraph, viz:

"Third. The said Trustees shall in each year pay out as much of the net income from each of the said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the bene-

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ficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several seperate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate, as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustees shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested

by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustees shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid."

John P. Wilson, the party of the first part in said Trust Indenture dated the 19th day of March, A. D. 1913, joins in the execution of this instrument for the purpose of evidencing his approval thereof.

In Witness Whereof we, the undersigned, have hereunto set our hands and seals this first day of December, A. D. 1920.

MARTHA WILSON (Seal)
JOHN P. WILSON, JR. (Seal)
ANNA W. DICKINSON (Seal)
JOHN P. WILSON (Seal)

35 3

State of Illinois } ss.
County of Cook }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John P. Wilson, personally known to me to be the same person whose name is subscribed to the foregoing Instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said Instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 13th day of December A. D. 1920.

EDWIN L. JOHNSON
Notary Public.

(Notarial Seal)

State of Illinois } ss.
County of Cook }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Martha Wilson and John P. Wilson, Jr., personaaly known to me to

be the same persons whose names are subscribed to the foregoing Instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said Instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of December A. D. 1920.

EDWIN L. JOHNSON
Notary Public.

(Notarial Seal)

4

State of California } ss.
County of Santa Barbara }

I, Lloyd I. Tilton, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Anna W. Dickinson, personally known to me to be the same person whose name is subscribed to the foregoing Instrument, appeared before me this day in person, and acknowledged that she signed, sealed and delivered the said Instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 6th day of December A. D. 1920.

LLOYD I. TILTON
Notary Public.

(Notarial Seal)

My commission expires Aug. 4, 1924.

State of California, } ss.
County of Santa Barbara, }

I, C. A. Hunt, County Clerk of the County of Santa Barbara, and also Clerk of the Superior Court for the said County; the same being a Court of Record, do hereby certify that Lloyd I. Tilton whose name is subscribed to the certificate or the proof of acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for said County of Santa Barbara, dwelling in said County, commissioned and sworn and authorized by the laws of said State to take the proof or acknowledgment of deeds and other instruments in writing to be recorded in said State, and to administer oaths or affirmations in said County. And further, that I am well acquainted with the handwriting of such Notary,

and verily believe that the signature to the said certificate of proof of acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 6th day of December A. D. 1920.

C. A. HUNT *Clerk.*

(Superior Court Santa Barbara Co. Cal.) By A. M. KNIGHT *Deputy.*

36 7912472

State of Illinois } ss No
Cook County }

Filed for Record
1923 May 3 A M 11 55
And Recorded in Book 18556 of Records Page 575
JOSEPH F. HAAS *Recorder*

37 To John P. Wilson, Jr. and William B. McIlvaine, as Trustees under a certain Indenture dated the 19th day of March, A. D. 1913, wherein John P. Wilson, of the City of Chicago, was the party of the first part, and John P. Wilson, Jr. and William B. McIlvaine, as Trustees, were the parties of the second part,—

We, the undersigned, being the three children of John P. Wilson, the grantor in said Indenture dated the 19th day of March, A. D. 1913, in pursuance of the power in us vested by the said Indenture, do hereby alter, change and modify the said Indenture or Trust Deed, as the same has been heretofore amended by us, as follows, viz:

By changing and altering Article II, III and IV of said Indenture, so that the same, from and after the date of the delivery of this instrument to the said Trustees, shall be in force and read as follows, viz:

"Article II.

The Trustees shall have power and authority at any time and from time to time,—

(1) To receive and collect all dividends declared and paid upon any shares of stock at any time subject to the terms of this agreement, and the interest upon all moneys, bonds

or other obligations at any time held by them hereunder, and to collect and receive any and all rents, and any and all sums of money at any time payable with respect to any of the property, real or personal, which is subject to the provisions of this agreement.

(2) To sell, convey, transfer and assign any or all of the stocks, bonds, obligations, securities and property, real or personal, held by said Trustees under this instrument, and to invest and reinvest the proceeds thereof, and the net income derived

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therefrom, which shall not be distributed as hereinafter provided, in accordance with any directions given in writing, signed by any two of the followings persons, viz: John P. Wilson, Jr., Martha Wilson, and Anna W. Dickinson.

No change shall be made by said Trustees in the investments held in trust by them without the written direction or approval of two of the persons above named, so long as two of them shall survive; and said Trustees shall be authorized to make any and every change in the investments held in trust which shall be directed or approved as aforesaid; and said Trustees shall be free from any liability or responsibility for any action taken by them which shall be done under or in pursuance of such written direction or approval.

In no event shall any purchaser from the Trustees, or any other person or corporation, be required to ascertain the authority and power of the Trustees to make any sale, transfer, assignment or delivery of any securities, real estate or other property held hereunder. But such purchaser, and all other parties dealing with the Trustees with respect to the property held by them, shall be entitled to rely upon the delivery, transfer or assignment of any securities or real estate by the Trustees as having been in all respects fully authorized, and shall not be affected by any notice to the contrary, or be required to see to the application of the purchase money.

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(3) To exercise the voting power upon all shares of stock held by the Trustees hereunder, and to exercise every power, election and discretion, give every notice, make every demand and do every act and thing in respect of any shares of stock and bonds or other obligations and securities held by the

Trustees hereunder which they could or might do if they were the absolute owners thereof.

(4) To sell, convey, lease and improve any real estate which shall at any time be held in trust by said Trustees under this instrument, and to do all other acts in relation to the said real estate which in the judgment of said Trustees shall be needful and desirable to the proper and advantageous management thereof, so as to protect the same and make the same productive; it being intended that said Trustees shall have the same powers in regard to the selling, conveying, leasing and improving said real estate, and otherwise managing the same, which the said Trustees would possess and have were they the absolute owners thereof, free from any trust whatsoever.

In making investments of trust funds said Trustees shall be free in their discretion to make investments in any and every kind of property, real and personal, including the stocks of corporations, without any limitation or restriction whatever, except as hereinbefore specifically provided.

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Article II.

(1) The trust funds and estate held under this Trust Indenture shall be kept divided by said Trustees into three (3) equal parts, each of which shall be held and administered as a separate trust for the benefit respectively of one of the three children of said party of the first part, hereinbefore named, subject, however, to the conditions, limitations and provisions hereinafter set forth.

A separate account shall be kept by the said Trustees of each of said trusts, and the investments in each of said separate trusts shall at all times be kept the same, both in kind and quantity, as near as may be, and to that end joint investments may be made by the Trustees on behalf of said separate trusts, each trust contributing an equal amount of the funds used in making such joint investments.

Any and all additions to the trust estate held under this Indenture (other than those from the accumulation of income from the separate trust estates) shall be divided between said separate trust estates held under this Indenture, in equal shares or parts, except and unless it shall be otherwise directed in the instrument of gift making an addition to the trust estate held under this Indenture.

Any property belonging to said trust estate may be taken and held for convenience in the name of a nominee of the said Trustees, or in the name of either of said Trustees, or in the name of said Trustees as joint tenants, without the addition of the word

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"Trustee" or "Trustees," or words indicating that such property is held in trust.

(2) The said Trustees shall in each year pay out as much of the net income for each of said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustees shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustees shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in

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pursuance of a written request signed as aforesaid.

Any request in writing for the distribution of any part of the income of any of said trusts may be signed by the guardian of any beneficiary who may be a minor or under disability, with like effect as though such request had been signed by the beneficiary in person, free from disability.

(3) From and after the death of any one of the original

beneficiaries under this Indenture, the net income which he or she would have been entitled to receive if living, shall be paid to the issue of said party of the first part, in accordance with any directions in regard thereto contained in the last will and testament of such deceased beneficiary, and in default of any such direction or appointment then to the issue surviving from time to time, if any, of such deceased beneficiary, per stirpes; and in default of such issue then to the issue surviving from time to time of the said party of the first part, per stripes.

Article IV.

Distribution of Principal of Trust Estate.

(1) The trust hereby created shall in any and the latest event terminate at the death of the survivor of Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and said trust may be terminated, in whole or in part, at any time by an instrument in writing signed by the said three children of the first party, or the survivors or survivor of them, upon the delivery of such written instrument to the said Trustees; provided,

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however, that during the life of said first party such written instrument must have the written approval of said first party.

(2) Upon the termination of the trust established by this Indenture, the several trust estates then held hereunder for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living, the trust estate which such deceased beneficiary would have been entitled to receive, if living, shall be paid over and delivered to the then surviving issue of the said party of the first part, in such shares and interests and subject to such trusts as may be directed in and by the last will and testament of such deceased beneficiary; and in default of any such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary, per stripes; and in default of such surviving issue, then to the surviving issue of the said party of the first part, per stripes."

In Witness Whereof we have hereunto set our hands and seals, this sixth day of December, A. D. 1920.

MARTHA WILSON (Seal)
JOHN P. WILSON JR (Seal)
ANNA W. DICKINSON (Seal)

I approve the foregoing instrument and the changes thereby made. December 14th, A. D. 1920.

JOHN P. WILSON.

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State of Illinois, } ss.
County of Cook. }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John P. Wilson, Jr., and Martha Wilson, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 14th day of December, A. D. 1920.

EDWIN L. JOHNSON
Notary Public.

(Notarial Seal)

State of California, } ss.
County of Santa Barbara. }

I, Pauline M. Finley, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Anna W. Dickinson, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 10th day of December, A D. 1920.

PAULINE M. FINLEY
Notary Public.

(Notarial Seal)

My Commission Expires June 13, 1922.

41 State of California, } ss
County of Santa Barbara, }

I, C. A. Hunt, County Clerk of the County of Santa Barbara, and also Clerk of the Superior Court for the said County; the same being a Court of Record do hereby certify that

Pauline M. Finley

whose name is subscribed to the certificate or the proof of acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for said County of Santa Barbara, dwelling in said County, commissioned and sworn and authorized by the laws of said State to take the proof or acknowledgment of deeds and other instruments in writing to be recorded in said State, and to administer oaths or affirmations in said County. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof of acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 10th day of December A. D., 1920.

C. A. HUNT
Clerk

(Superior Court Santa Barbara Co. Cal.)

7912473

State of Illinois } ss No
Cook County }

Filed for Record
1923 May 3 AM 11 56

And Recorded in Book 18630 of Records Page 296

JOSEPH F. HAAS
Recorder

Filed Apr. 18, 1931.

42 UNITED STATES BOARD OF TAX APPEALS.

* * (Caption—52931) * * *

ANSWER.

Filed Apr 18 1931.

The respondent, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of this taxpayer filed February 16, 1931, admits and denies as follows:

1. Admits that William B. McIlvaine and John P. Wilson, Jr., are residents of Cook County, in the State of Illinois. Respondent further admits that the petitioners are fiduciaries in this case and are designated in the deficiency letter as "Trustee under Deed of Trust of John P. Wilson", but denies the remainder of the matter set forth in paragraph No. 1 of the petition.

2. Admits the allegations contained in paragraph No. 2 of the petition.

3. Admits the allegations contained in paragraph No. 3 of the petition.

4. Denies that the respondent erred in determining or computing petitioner's tax liability for the years 1924, 1925 and 1926, as alleged in subparagraphs (a) to (i), inclusive, of paragraph No. 4 of the petition.

5. Denies the allegations contained in subparagraphs (a), (b) and (c) of paragraph No. 5 of the petition.

6. Denies generally and specifically each and every allegation not hereinbefore admitted, qualified or denied.

43 Wherefore, it is prayed that the petitioners' appeal be denied.

(Signed) C. M. CHAREST,
C. M. Charest,
General Counsel, Bureau of Internal Revenue.

Of Counsel:
BRUCE A. LOW,
Special Attorney, Bureau of Internal Revenue.

3 William B. McIlvaine and John P. Wilson, Jr., Trustees under Deed of Trust of John P. Wilson,
Petitioners,
v.
Commissioner of Internal Revenue,
Respondent.
} Docket No. 57226.

Appearances:

For Taxpayer: Clay Judson, Esq., John P. Wilson, Esq.

For Comm's.: F. R. Shearer, Esq., E. L. Updike, Esq.

DOCKET ENTRIES:

1931

Apr. 25—Petition received and filed. Taxpayer notified. (Fee not paid)

Apr. 30—Fee paid (check).

May 5—Copy of petition served on General Counsel.

Jul. 6—Answer filed by General Counsel.

Jul. 20—Copy of answer served on taxpayer. General Calendar.

1932

Aug. 11—Hearing set Oct. 10, 1932.

Sep. 20—Motion to advance hearing to 10/5/32 filed by General Counsel. 9/23/32 granted.

Oct. 5—Hearing had before Mr. Seawell on merits. Submitted. Consolidated with docket 52931—stipulation of facts filed. Petitioner's brief due Nov. 15, 1932—reply Dec. 24, 1932. Respondent's brief due Dec. 10, 1932.

Oct. 19—Transcript of hearing of Oct. 5, 1932 filed.

Nov. 14—Brief filed by taxpayer. 11/14/32 copy served.

Dec. 7—Motion for extension to Jan. 10, 1933 for General Counsel's brief and January 24, 1933 for petitioner's reply, filed by General Counsel and granted.

1933

Jan. 10—Brief filed by General Counsel.

Jan. 23—Reply brief filed to taxpayer, 1/24/33 copy served.

Aug. 1—Hearing had before Mr. Van Fossan (Seawell)

Nov. 7—Findings of fact and opinion rendered, H. F. Seawell, Div. 4. Order will be entered that there is no deficiency nor overpayment.

Nov. 9—Decision entered, H. F. Seawell, Div. 4.

1934

Feb. 7—Petition for review by U. S. Circuit Court of Appeals (7) with assignments of error filed by General Counsel.

Feb. 14—Proof of service filed by General Counsel.

Apr. 2—Motion for extension to 5/8/34 to complete record filed by General Counsel.

Apr. 2—Order enlarging time to May 8, 1934 for preparation of evidence and delivery of record entered.

May 4—Motion for extension to June 8, 1934 to complete and transmit record filed by General Counsel.

May 4—Order enlarging time to June 8, 1934 for preparation of evidence and delivery of record entered.

Jun. 1—Motion for extension to 8/8/34 to complete record filed by General Counsel.

4 Jun. 1—Order enlarging time to August 8, 1934 for preparation of evidence and delivery of record entered.

Jul. 2—Statement of evidence lodged.

Jul. 20—Notice of lodgment of statement of evidence with hearing notice 7/18/34 filed.

Jul. 20—Notice of change of hearing to August 1, 1934 filed.

Jul. 20—Praecipe filed—proof of service thereon.

Aug. 1—Hearing had before Mr. Van Fossan (Seawell) on approval of statement of evidence—no objections filed—referred to Mr. Van Fossan.

Aug. 2—Statement of evidence approved and ordered filed.

Aug. 8—Order enlarging time to Sept. 10, 1934 for transmission and delivery of record entered.

 Filed Apr. 25, 1931.

William B. McIlvaine and John P. Wilson, Jr., Trustees under Deed of Trust of John P. Wilson,
Petitioners,
vs.
Commissioner of Internal Revenue,
Respondent.
} Docket No. 57226.

PETITION.

Filed April 25, 1931.

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his Notice of Deficiency dated March 7, 1931. The said Notice of Deficiency contains no Bureau symbols or other identifying initials. Attached to said Notice of Deficiency, however, is a statement bearing the symbols: IT:AR:D-1 RMT-60D.

As a basis for their proceeding the petitioners allege as follows:

1. The petitioners are residents of Cook County, in the State of Illinois, and have their principal office at 140 South Dearborn Street, Chicago, Illinois.

45 Petitioners are also fiduciaries in this case as Trustees of the three separate trust estates known as the Martha Wilson Trust, Anna W. Dickinson Trust, and John P. Wilson, Jr. Trust, but designated in the deficiency letter as "Trustees under Deed of Trust of John P. Wilson." The petitioners were acting as Trustees of said three separate trust estates throughout the year 1928, pursuant to the provisions of the trust indenture of March 19, 1913, between said John P. Wilson and said William B. McIlvaine and John P. Wilson, Jr., as amended, first, on the nineteenth day of June, A. D. 1919, as amended, second, on the first day of December, A. D. 1920, and as last amended on the sixth day of December, A. D. 1920; each of said amendments being made pursuant to the power of amendment reserved in the original instrument and by the amendments made from time to time.

2. The Notice of Deficiency (copy of which is attached

hereto and marked Exhibit "A") was mailed to the petitioners on March 7, 1931.

3. The taxes in controversy are income taxes for the calendar year 1928. The amount of the taxes in controversy is $7,149.52.

4. The determination of the tax set forth in said Notice of Deficiency is based upon the following errors:

(a) The Commissioner of Internal Revenue erred in finding that the action of the Trustees in filing separate re-
46 turns for the Martha Wilson Trust, Anna W. Dickinson Trust, and John P. Wilson, Jr. Trust was improper, and in holding that the income reported on said three separate trusts should have been included on a single return, showing the undistributed income as taxable to these three trusts considered as a single trust.

(b) The Commissioner of Internal Revenue erred in finding that the petitioners had income subject to surtax in the year 1928 in the sum of $77,085.15.

(c) The Commissioner of Internal Revenue erred in finding that there was a deficiency in tax due from the petitioners for the year 1928 in the sum of $7,149.52.

5. The facts upon which the petitioners rely as the basis of this proceeding are as follows:

The instrument under which said William B McIlvaine and John P. Wilson, Jr., acted as Trustees, insofar as the income sought to be taxed against these petitioners is concerned, provided for three separate and distinct trusts, to be known respectively as the Martha Wilson Trust, the Anna W. Dickinson Trust, and the John P. Wilson, Jr. Trust. A copy of the said instrument which is composed of the original trust indenture and all amendments thereto is hereby attached as Exhibit "B" and made a part hereof.

On March 19, 1913, John P. Wilson (the father of John P. Wilson, Jr.) set up a trust with said William B. McIlvaine and John P. Wilson, Jr. as Trustees for the benefit of his
47 three children, Martha Wilson, Anna W. Dickinson, and John P. Wilson, Jr. The trust deed contained the following provision:

"Any of the provisions of this indenture may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries hereinbefore named, or the survivors or survivor of them which shall be delivered to the said Trustees or one of them, provided, however, that such instrument must be ap-

proved in writing by the said party of the first part, if made during his life, and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form."

The three beneficiaries named were as above stated the three children of said John P. Wilson, namely, Martha Wilson, Anna W. Dickinson, and John P. Wilson, Jr.

On the 19th day of June, A. D. 1919, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the Trustees, the said trust deed of March 19, 1913, was duly amended by provisions reading in part as follows:

"First: The trust estate now held under said Trust Deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interests and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said Indenture over one third ($\frac{1}{3}$) of said trust estate and the income thereof, except as may be otherwise specifically provided herein.

48 Second. Distribution of Income.

Any and all additions to the trust estate held under said Indenture (other than additions from the accumulation of income from the separate trust estates held under said Indenture) shall be divided between said separate trust estates held under said Indenture in equal shares or parts, except and unless it shall be otherwise directed in the instrument of gift making an addition to the trust estate held under said Indenture.

Third. The net income of each of the three trust estates held under said Indenture shall be paid over in whole or in part to the beneficiary or beneficiaries from time to time entitled to share therein, as and when the Trustees acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing, signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr. and Anna W. Dickinson, and

the net income from each of said trusts not paid over to the beneficiaries as aforesaid, shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the said Trustees.

In the event of the death of John P. Wilson, Jr. his wife, Alice B. Wilson, may sign any such request or direction for the distribution of said net income in his place, with like effect as though he were living and had signed the same; and in the event of the death of Anna W. Dickinson her husband, William R. Dickinson, may sign any such request or direction for the distribution of said net income in her place, with like effect as though she were living and had signed the same.

In the event of the death of any of said original beneficiaries named in said Indenture, the net income from the trust estate held under said Trust Indenture, which such deceased beneficiary would have been entitled to receive if living, shall be paid over and distributed to the issue of the said grantor, John P. Wilson, in accordance with any directions given by such beneficiary in and by his or her last will and testament; in default of any such direction or appointment, then to the issue surviving from time to time, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the issue surviving, from time to time, of the said grantor, John P. Wilson, per stirpes.

49 Fourth. Distribution of the Principal of the Trust Estate.

Upon the termination of the trusts established by said Indenture, the several trust estates held thereunder shall be paid over and distributed as follows:

The several trust estates held in trust under said Indenture for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living the trust estate which such deceased beneficiary would have been entitled to receive if living shall be paid over and distributed to the then surviving issue of said grantor, John P. Wilson, in such shares and interests, and subject to such trusts, as may be directed in and by the last will and testament of such deceased beneficiary; and in default of any such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary per stirpes; and in default of such surviving issue, then to the surviving issue of the said grantor, John P. Wilson, per stirpes."

On December 1, 1920, by an instrument duly executed by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the Trustees, said trust indenture as theretofore amended was again amended in part as follows:

"By striking out the first paragraph of the Third Article or Section of the instrument in writing dated the 19th day of June, A. D. 1919, signed by Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, altering and changing the said Trust Indenture dated the 19th day of March, A. D. 1913, which said paragraph so stricken out reads as follows:

'Third. The net income of each of the three trust estates held under said Indenture shall be paid over in whole or or in part to the beneficiary or beneficiaries from time to time entitled to share therein, as and when the Trustees acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing, signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid, shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the said Trustee.'

and inserting in the said instrument dated the 19th day of June, A. D. 1919, in lieu of the paragraph so stricken out, the following paragraph, viz:

"Third. The said Trustees shall in each year pay out as much of the net income from each of the said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate, as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustees shall in each year pay out for charitable uses and purposes

so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustees shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid.'"

On December 6, 1920, by an instrument duly executed
51 by said Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr., approved in writing by said John P. Wilson, and delivered to the Trustees, said trust indenture as theretofore amended was again amended in part as follows, viz.: By changing and altering Articles III and IV of said indenture so that the same from and after the date of delivery of said amendment to said Trustees was in force and read in part as follows:

"Article III.

(1) The trust funds and estate held under this Trust Indenture shall be kept divided by said Trustees into three (3) equal parts, each of which shall be held and administered as a separate trust for the benefit respectively of one of the three children of said party of the first part, hereinbefore named, subject, however, to the conditions, limitations and provisions hereinafter set forth.

A separate account shall be kept by the said Trustees of each of said trusts, and the investments in each of said separate trusts shall at all times be kept the same, both in kind and quantity, as near as may be, and to that end joint investments may be made by the Trustees on behalf of said separate trusts, each trust contributing an equal amount of the funds used in making such joint investments.

Any and all additions to the trust estate held under this Indenture (other than those from the accumulation of income from the separate trust estates) shall be divided between said separate trust estates held under this Indenture, in equal shares or parts, except and unless it shall be otherwise directed in the instrument of gift making an addition to the trust estate held under this Indenture.

* * * * * *

(2) The said Trustees shall in each year pay out as much

of the net income from each of said separate trusts to the beneficiaries from time to time entitled to share therein
52 as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustees shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustees shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid.

Any request in writing for the distribution of any part of the income of any of said trusts may be signed by the guardian of any beneficiary who may be a minor or under disability, with like effect as though such request had been signed by the beneficiary in person, free from disability.

(3) From and after the death of any one of the original beneficiaries under this Indenture, the net income which he or she would have been entitled to receive if living, shall be paid to the issue of said party of the first part, in accordance with any directions in regard thereto contained in the last will and testament of such deceased beneficiary, and in default of any such direction or appointment then to the issue surviving from time to time, if any, of such deceased beneficiary, per stirpes; and in default of such issue then to the issue surviving from time to time of the said party of the first part, per stirpes.

53 "Article IV.

Distribution of Principal of Trust Estate.

* * * * * *

"(2) Upon the termination of the trust established by this Indenture, the several trust estates then held hereunder for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living, the trust estate which such deceased beneficiary would have been entitled to receive, if living, shall be paid over and delivered to the then surviving issue of the said party of the first part, in such shares and interests and subject to such trusts as may be directed in and by the last will and testament of such deceased beneficiary; and in default of any such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary, per stirpes; and in default of such surviving issue, then to the surviving issue of the said party of the first part, per stirpes."

Under the terms of the trust agreement as amended, copy of which has been attached hereto as Exhibit "B" and the material provisions of which have been quoted above, the petitioners in this case are clearly shown to have been the Trustees of three separate and distinct trusts. As such Trustees they duly reported the income accumulated in said separate trusts and paid the tax due thereon. This has been admitted by the Commissioner of Internal Revenue. Having accounted for and paid the proper tax upon these separate trusts, these Trustees cannot now be taxed as the Trustees of a hypothetical, nonexistent trust which combines the income of all of said separate trusts.

Wherefore, the petitioners pray that this Board may
54 hear this case and determine that there is no tax due from the petitioners herein for the year 1928.

JOHN P. WILSON,
CLAY JUDSON,
Attorneys for Petitioners.

WILSON, MCILVAINE, HALE & TEMPLETON,
Of Counsel.
140 South Dearborn Street,
Chicago, Illinois.

State of Illinois, } ss.
County of Cook. }

WILLIAM B. McILVAINE and JOHN P. WILSON, JR., being first duly sworn, say that they have read the foregoing Petition and are familiar with the statements contained therein, and that the facts stated are true.

WILLIAM B. McILVAINE,
JOHN P. WILSON, JR.

Subscribed and Sworn to before me this 23rd day of April, A. D. 1931.

H. C. ADCOCK,
Notary Public.

(Notarial Seal)

55 EXHIBIT "A".

TREASURY DEPARTMENT.
Washington.

Mar. 7, 1931.

Messrs. Wm. B. McIlvaine and John P. Wilson, Jr.,
Trustees under deed of trust of John P. Wilson,
140 South Dearborn Street,
Chicago, Illinois.

Sirs:

You are advised that the determination of your tax liability for the year 1928 discloses a deficiency of $7,149.52 as shown in the statement attached.

In accordance with section 272 of the Revenue Act of 1928, notice is hereby given of the deficiency mentioned. Within sixty days (not counting Sunday as the sixtieth day) from the date of the mailing of this letter, you may petition the United States Board of Tax Appeals for a redetermination of your tax liability.

However, If You Do Not Desire To Petition, you are requested to execute the enclosed agreement form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing of this agreement will expedite the closing of your return by permitting an early assessment of any deficiency and preventing the accumulation of interest charges, since the interest period terminates thirty days after filing the enclosed agreement, or

on the date assessment is made, whichever is earlier; Whereas If No Agreement Is Filed, interest will accumulate to the date of assessment of the deficiency.

Respectfully,
DAVID BURNET,
Commissioner.
By J. C. WILMER,
Deputy Commissioner.

Enclosures:
Statement
Form 882
Form 870

56 Statement.

IT:AR:D-1
RMT-60D

In re: Messrs. Wm. B. McIlvaine and John P. Wilson, Jr., Trustees under deed of trust of John P. Wilson, 140 South Dearborn Street, Chicago, Illinois.

Tax Liability.

Year	Tax Liability	Tax Assessed	Deficiency
1928	$7,149.52	None	$7,149.52

A review of the report of the internal revenue agent in charge at Chicago, Illinois, covering the tax liability of the trusts of Anna W. Dickinson; Martha Wilson and John Wilson, for the year 1928, discloses the same to be correct as submitted with the following exceptions:

In this connection, however, this office holds that the action of the trustees in filing separate returns for each of the above-mentioned trusts was erroneous and that the income reported thereon should have been included in each year on a single return, form 1041 filed by the trustees of the trust created by John P. Wilson under deed of trust dated March 19, 1913, the distribution to the beneficiaries of the trust being shown thereon, and a form 1041, showing the undistributed income filed to reflect the income taxable to the trust as an entity.

In arriving at the above conclusion you are advised that despite the modifications of the original trust agreement dated March 19, 1913, and as a result of which you have pro-

ceeded on the theory that three separate trusts were created, this office is of the opinion that there is nothing in the amendments to the trust which justifies the conclusion that by such amendments there were created three separate and distinct trust in lieu of the one theretofore effective.

In view of the above, returns for the trust on forms 1041 and 1040 for the year 1928, have been prepared under the provisions of section 3176 of the revised statute and the tax computed thereon as shown below:

57 Messrs. Wm. B. McIlvaine and John P. Wilson, Jr., Trustees under deed of trust of John P. Wilson. Statement.

Net income originally reported		None
Add:		
1. Dividends from John P. Wilson Trust		$77,085.15
Total corrected income subject to surtax		$77,085.15
Less:		
Dividends	$77,085.15	
Personal exemption	1,500.00	78,585.15
Balance subject to normal tax		None
Surtax on $77,085.15		$7,335.33
Less:		
12½% on capital net loss of $1,486.50		185.81
Total tax liability		$7,149.52
Tax previously assessed		none
Deficiency		$7,149.52

Explanation of Change.

1. Undistributed income from the trust of John P. Wilson, taxable to the trust as an entity, has been included as income as explained above.

Due to the fact that the statute of limitations will presently bar any assessment of additional tax against you for the year the Bureau will be unable to afford you an opportunity under the provisions of article 1211 of Regulations 69 and/or article 451 of Regulations 74 to discuss your case before mailing formal notice of its determination as provided by section 274(a) of the Revenue Act of 1926 and/or

section 272(a) of the Revenue Act of 1928. It is, therefore, necessary at this time to issue this formal notice of deficiency.

58 This Indenture, Made this 19th day of March, A. D. 1913, by and between John P. Wilson, of the City of Chicago, County of Cook and State of Illinois, the party of the first part, and John P. Wilson, Jr., and William B. McIlvaine, hereinafter termed the Trustees, of Cook County, in the State of Illinois, the parties of the second part, Witnesseth:

Article I.

The party of the first part, being desirous of establishing and creating the trust hereinafter mentioned for the purposes and upon the terms set forth, does hereby sell, assign, transfer and set over unto the Trustees, as joint tenants and not as tenants in common, the following shares of stock and the certificates (in each case endorsed in blank for transfer) representing and evidencing the said shares of stock and the right thereto, and also the bonds and notes hereinafter described, to wit:

43925 shares of the capital stock of The Goldfield Consolidated Mines Company;

42½ shares of the Maywood Land Association;

20 shares of the capital stock of the Machinery Designing and Manufacturing Company;

25 shares of the Broadview Land Association;

187½ common shares of The Equitable Land Association of Chicago;

250 preferred shares of The Equitable Land Association of Chicago;

3 6% first mortgage gold bonds of the Proviso Land Association, due November 1, 1920; face value $1000 each;

2 4% first mortgage gold bonds of Chicago Polyclinic, face value $500 each; due July 1, 1935;

25 4% Consolidated mortgage gold bonds of Chicago Herald Company, face value $1000 each; due April 1, 1921;

2 notes of Frederick Crumbaugh, both dated November 1, 1910; each for $1250 with interest at the rate of 7% per annum; one due three years after date and the other four years after date.

Note of Iretus R. Krum, dated December 9, 1905, for $20,000, with interest at the rate of 5% per annum; due three years after date.

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and the Trustees are hereby authorized to receive and accept any and all moneys, bonds, notes, shares of stock and other securities which at any time and from time to time, by delivery or by writing of any kind, may be transferred or assigned to the Trustees to become a part of the principal of the trust estate which, together with any income therefrom accumulated, as hereinafter provided, is to be held and disposed of, together with the proceeds thereof, subject to the terms of this agreement.

Article II.

The Trustees shall have power and authority at any time and from time to time

(1) To receive and collect all dividends declared and paid upon any shares of stock at any time subject thereto, and the interest upon all moneys, bonds or other obligations at any time held by them hereunder, and to receive any and all sums at any time payable in respect to any shares of stock, bonds or other obligations or securities which are subject to the provisions of this agreement;

(2) To sell, transfer and assign any or all of the stocks, bonds, obligations, securities or property held by said Trustees under this instrument, and to invest and reinvest the proceeds thereof and the net income derived therefrom which shall not be distributed as hereinafter provided in accordance with any directions given in writing signed by any two of the following persons, viz: John P. Wilson, Jr., Martha Wilson and Anna W. Dickinson, all of Chicago. No change shall be made by said Trustees in the securities or obligations held in trust by them without the written direc-

3

59 tion or approval of two of the persons above named, and said Trustees shall be authorized to make any and every change in the securities or obligations held in trust which shall be directed or approved as aforesaid, and said Trustees shall be free from any liability or responsibility for any action taken by them which shall be done under or in pursuance of any such written direction or approval. In no event shall any purchaser from the Trustees, or any other person or corporation, be required to ascertain the authority and power of the Trustees to make any sale of any securities

or any transfer, assignment or delivery thereof, but such purchaser and all other parties shall be entitled to rely upon the delivery or transfer or assignment of any such securities by the Trustees as having been in all respects fully authorized, and shall not be affected by any notice to the contrary or be required to see to the application of the purchase money.

(3) To exercise the voting power upon all shares of stock held by the Trustees hereunder and to exercise every power, election and discretion, give every notice, make every demand and do every act and thing in respect of any shares of stock and bonds or other obligations and securities held by the Trustees hereunder which they could or might do if they were the absolute owners thereof.

Article III.

Distribution and Application of Income.

The net income derived from said Trust Estate shall be retained by said Trustees and accumulated, and be added to the principal of said Trust Fund for a period of

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fifteen (15) years from the date of this indenture unless said period of accumulation shall be shortened by an instrument in writing signed by the three children of said first party, viz.: John P. Wilson, Jr., Martha Wilson and Anna W. Dickinson, or the survivors or survivor of them, and no such instrument shall be affective to shorten said period of accumulation during the life of said party of the first part without his written approval endorsed thereon, and from and after the termination of said period of accumulation of said income, said net income as and when received by the Trustees shall be distributed, paid over and applied by the Trustees as follows:

(1) One-third (1/3) thereof shall be paid over and distributed to each of the three children of the party of the first part, hereinbefore named, so long as they shall severally live.

(2) From and after the death of either of said beneficiaries his or her one-third of said net income shall be paid over and distributed in accordance with any directions contained in his or her last will and testament, and in default of any such directions, then to the surviving issue, if any, of

such deceased child, and in default of such issue then to the beneficiaries entitled to participate in the other two-thirds of said income pro rata.

Article IV.

Distribution of Principal of Trust Estate.

The trust hereby created shall in any and the latest event terminate at the death of the survivor of

60 5

Martha Wilson, John P. Wilson, Jr. and Anna W. Dickinson, and said trust may be terminated in whole or in part at any time by an instrument in writing signed by the said three children of the first party, or the survivors or survivor of them, upon the delivery of such written instrument to the said Trustees, provided, however, that during the life of said first party such written instrument must have the written approval of said first party.

Upon the termination of said trust the trust estate then in the hands of said Trustees shall be paid over and distributed as follows:

(a) One third (1/3) thereof to each of the three children of said first party, hereinbefore named, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson;

(b) If either of said three children shall not then be living his or her one third of said trust estate shall be paid over and distributed in accordance with the provisions of his or her last will and testament, the same in all respects as though it had formed a part of his or her estate at the time of his or her death, and in default of any disposition thereof by will as aforesaid, then said one third of said trust estate shall vest in his or her surviving issue, if any, per stirpes, and in default of such issue the same shall be paid over and distributed to my lawful issue then surviving per stirpes.

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Article V.

Concerning the Trustees.

The Trustees hereby accept the trust created by this indenture, and agree to act in accordance with the terms and

provisions of said indenture, but only upon and subject to the following terms and conditions, which are hereby agreed to by the party of the first part, for himself, his heirs and his legal representatives, and by each and every beneficiary accepting or receiving or claiming any benefit or right under or by virtue of this indenture, to wit:

The Trustees shall be reimbursed and indemnified against any and all liability, loss or expense because of the holding of any shares of stock or other securities constituting a part of the principal of the trust estate, and shall have a lien upon the principal of the trust estate and the income therefrom for the amount of any liability, loss or expense which may be so incurred by them, including the expense of defending any action or proceeding instituted against them by reason of any such holding.

Out of the income of the principal of the trust estate, the Trustees shall pay all taxes, assessments or other governmental charges which they may be required to pay or to retain because or in respect of any part of the principal of the trust estate or the income therefrom or the interest of the Trustees therein or the interest of any beneficiay or other peson therein, under any present or future law of the United States, or of any state, county, municipality or other taxing authority therein.

The Trustees shall be entitled before making any such payment or distribution, to deduct from the amount of

the income in their hands the amount then accrued and due to them for their reasonable compensation and the reasonable expense incurred by them in and about the administration of the trust, including the compensation of counsel, and any loss or expense to which they may have been subject, as aforesaid, and the amount of any taxes, assessments or other governmental charges which they may have been required to pay in the premises.

The Trustees shall not in any event be liable to any party in interest or to any person whatsoever save only for his own wilful default.

The said Trustees or either of them may resign at any time by giving notice in writing of such resignation to said first party while he shall live, and after his death by giving notice in writing of such resignation to his cotrustee or

to the beneficiaries hereinbefore named, or to the survivors or survivor of them.

In case of the resignation of the Trustees or of either of them, or of a vacancy in said trusteeship occurring in any way, the said party of the first part, if living, shall have power to appoint a successor in trust by an instrument in writing delivered to the said Trustees or either of them, and after the death of said first party the three beneficiaries hereinbefore named, or the survivors or survivor of them, shall have power to appoint a successor in like manner, and upon the appointment of a successor in trust the said Trustees shall assign, transfer and deliver to the successor or successors in trust all of the trust estate then in their hands, and thereupon and thereafter the acting Trustees shall have all the rights, powers, duties and au-

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thority which are granted to or imposed upon said original Trustees under the provisions of this indenture.

Any of the provisions of this indenture may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries hereinbefore named, or the survivors or survivor of them which shall be delivered to the said Trustees or one of them, provided, however, that such instrument must be approved in writing by the said party of the first part, if made during his life, and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form. The Trustees and each of them shall be free from any responsibility or liability for any act done by them (including any disposition in whole or in part of the trust estate) in pursuance of the written direction of any two of the beneficiaries hereinbefore named, provided such instrument shall be approved by said first party if executed and delivered during his life.

The beneficiaries, or any or either of them, may act through an attorney in fact in signing any and all instruments delivered to the Trustees under this indenture, with like effect as though signed in person, and any or either of said beneficiaries may act as such attorney in fact when authorized to do so.

In Witness Whereof the parties have hereunto set

62 9

their hands and seals the day and year first above written.

JOHN P. WILSON (Seal)
WILLIAM B. MCILVAINE (Seal)
JOHN P. WILSON, JR., (Seal)

State of Illinois, } ss.
County of Cook. }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John P. Wilson, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 19th day of March, A. D. 1913.

EDWIN L. JOHNSON,
Notary Public.

(Notarial Seal)

State of Illinois, } ss.
County of Cook. }

I, Edwin L. Johnson, a

10

Notary Public in and for said County, in the State aforesaid, do hereby certify that John P. Wilson, Jr., personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 19th day of March, A. D. 1913.

EDWIN L. JOHNSON
Notary Public.

(Notarial Seal)

State of Illinois, } ss.
County of Cook. }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Wil-

liam B. McIlvaine, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 19th day of March, A. D. 1913.

EDWIN L. JOHNSON
Notary Public.

(Notarial Seal)

63 7912470

State of Illinois } ss No
Cook County }

Filed for Record
1923 May 3 A M 11 54
And Recorded in Book 18556 of Records Page 571
JOSEPH F. HAAS
Recorder

64 To John P. Wilson, Jr., and William B. McIlvaine, as Trustees under a certain Indenture dated the 19th day of March, A. D. 1913, wherein John P. Wilson, of the City of Chicago, was party of the first part and John P. Wilson, Jr. and William B. McIlvaine, as Trustees, were parties of the second part:

We, the undersigned, being the three children of John P. Wilson, the grantor in said Indenture dated the 19th day of March, A. D. 1913, in pursuance of the power in us vested by the said Indenture, do hereby alter, change, and modify the said Indenture or Trust Deed as follows, viz:

First. The trust estate now held under said Trust Deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interests and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said Indenture over one third

(⅓) of said trust estate and the income thereof, except as may be otherwise specifically provided herein.

Second. Distribution of Income.

Any and all additions to the trust estate held under said Indenture (other than additions from the accumulation of income from the separate trust estates held under said Indenture) shall be divided between said separate trust estates held under said Indenture in equal shares or parts, except and unless it shall be otherwise directed in the instrument of gift making an addition to the trust estate held under said Indenture.

Third. The net income of each of the three trust

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estates held under said Indenture shall be paid over in whole or in part to the beneficiary or beneficiaries from time to time entitled to share therein, as and when the Trustees acting under said Indenture be requested or directed to pay over the same by an instrument in writing, signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid, shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the said Trustees.

In the event of the death of John P. Wilson, Jr. his wife, Alice B. Wilson, may sign any such request or direction for the distribution of said net income in his place, with like effect as though he were living and had signed the same; and in the event of the death of Anna W. Dickinson her husband, William R. Dickinson, may sign any such request or direction for the distribution of said net income in her place, with like effect as though she were living and had signed the same.

In the event of the death of any of said original beneficiaries named in said Indenture, the net income from the trust estate held under said Trust Indenture, which such deceased beneficiary would have been entitled to receive if living, shall be paid over and distributed to the issue of the said grantor, John P. Wilson, in accordance with any directions given by such beneficiary in and by his or her last will and testament; and in default of any such direction or appointment, then to the issue surviving, from time to

time, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the issue surviving, from time to time, of the said grantor, John P. Wilson, per stirpes.

Fourth.—Distribution of the Principal of the Trust Estate.

Upon the termination of the trusts established by said Indenture, the several trust estates held thereunder shall be paid over and distributed as follows:

The several trust estates held in trust under said Indenture for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living the trust estate which such deceased beneficiary would have been entitled to receive if living shall be paid over and distributed to the then surviving issue of said grantor, John P. Wilson, in such shares and interests, and subject to such trusts, as may be directed in and by the last will and testament of such deceased beneficiary; and in default of any such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary per stirpes; and in default of such surviving issue, then to the surviving issue of the said grantor, John P. Wilson, per stirpes.

Fifth. All the provisions of the said Trust Indenture (including the power to modify, alter and change the said Indenture as the same shall be in force after the delivery of this instrument to the said Trustees), except as the same are expressly or necessarily modified or altered by

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the terms of this instrument, shall remain and continue in full force and effect.

In Witness Whereof we have hereunto set our hands and seals, this 19th day of June, A. D. 1919.

MARTHA WILSON (Seal)
JOHN P. WILSON JR (Seal)
ANNA W. DICKINSON (Seal)

State of Illinois, } ss.
County of Cook. }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, per-

sonally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this Nineteenth day of June, A. D. 1919.

EDWIN L. JOHNSON,
Notary Public.

(Notarial Seal)

I approve the foregoing instrument and the changes thereby made.

JOHN P. WILSON.

June 19-1919.

66 7912471

State of Illinois } ss No
Cook County }

Filed for Record
1923 May 3 AM 11 55
And Recorded in Book 18556 of Records Page 578
JOSEPH F. HAAS
Recorder

67 To John P. Wilson, Jr. and William B. McIlvaine, Trustees under a Trust Indenture dated the 19th day of March, A. D. 1913, wherein John P. Wilson, of the City of Chicago, was the party of the first part, and John P. Wilson, Jr. and William B. McIlvaine, as Trustees, were the parties of the second part:

You are hereby notified that we, Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, being the three children of John P. Wilson, the grantor in said Indenture dated the 19th day of March, A. D. 1913, in pursuance of the power in us vested by the said Indenture, do hereby alter, change and modify the said Indenture or Trust Deed as heretofore amended and now in force as follows, viz:

By striking out the first paragraph of the Third Article or Section of the instrument in writing dated the 19th day of June, A. D. 1919, signed by Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, altering and changing the said Trust Indenture dated the 19th day of March, A. D. 1913, which said paragraph so stricken out reads as follows:

"Third. The net income of each of the three trust estates held under said Indenture shall be paid over in whole or in part to the beneficiary or beneficiaries from time to time entitled to share therein, as and when the Trustees acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing, signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid, shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the said Trustee."

and inserting in the said instrument dated the 19th day of June, A. D. 1919, in lieu of the paragraph so stricken out, the following paragraph, viz:

"Third. The said Trustees shall in each year pay out as much of the net income from each of the said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the bene-

2

ficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate, as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustees shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustees shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid."

John P. Wilson, the party of the first part in said Trust Indenture dated the 19th day of March, A. D. 1913, joins in the execution of this instrument for the purpose of evidencing his approval thereof.

In Witness Whereof we, the undersigned, have hereunto set our hands and seals this first day of December, A. D. 1920.

MARTHA WILSON (Seal)
JOHN P. WILSON, JR. (Seal)
ANNA W. DICKINSON (Seal)
JOHN P. WILSON (Seal)

68 2

State of Illinois } ss.
County of Cook }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John P. Wilson, personally known to me to be the same person whose name is subscribed to the foregoing Instrument, appeared before me this day in person, and acknowledged that he signed, sealed and delivered the said Instrument as his free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 13th day of December A. D. 1920.

EDWIN L. JOHNSON
Notary Public.

(Notarial Seal)

State of Illinois } ss.
County of Cook }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Martha Wilson and John P. Wilson, Jr., personally known to me to be the same persons whose names are subscribed to the foregoing Instrument, appeared before me this day in person, and acknowledged that they signed, sealed and delivered the said Instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal this 13th day of December A. D. 1920.

EDWIN L. JOHNSON
Notary Public.

(Notarial Seal)

State of California }
County of Santa Barbara } ss.

I, Lloyd I. Tilton, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Anna W. Dickinson, personally known to me to be the same person whose name is subscribed to the foregoing Instrument, appeared before me this day in person, and acknowledged that she signed, sealed and delivered the said Instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 6th day of December A. D. 1920.

LLOYD I. TILTON
Notary Public.

(Notarial Seal)

My commission expires Aug. 4, 1924.

State of California, }
County of Santa Barbara, } ss.

I, C. A. Hunt, County Clerk of the County of Santa Barbara, and also Clerk of the Superior Court for the said County; the same being a Court of Record, do hereby certify that Lloyd I. Tilton whose name is subscribed to the certificate or the proof of acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such proof or acknowledgment, a Notary Public in and for said County of Santa Barbara, dwelling in said County, commissioned and sworn and authorized by the laws of said State to take the proof or acknowledgment of deeds and other instruments in writing to be recorded in said State, and to administer oaths or affirmations in said County. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof of acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 6th day of December A. D. 1920.

C. A. HUNT
Clerk.

(Superior Court Santa Barbara Co. Cal.)

By A. M. KNIGHT
Deputy.

69 7912472

State of Illinois } ss No
Cook County }

Filed for Record
1923 May 3 A M 11 55
And Recorded in Book 18556 of Records Page 575
JOSEPH F. HAAS
Recorder

70 To John P. Wilson, Jr. and William B. McIlvaine, as Trustees under a certain Indenture dated the 19th day of March, A. D. 1913, wherein John P. Wilson, of the City of Chicago, was the party of the first part, and John P. Wilson, Jr. and William B. McIlvaine, as Trustees, were the parties of the second part,—

We, the undersigned, being the three children of John P. Wilson, the grantor in said Indenture dated the 19th day of March, A. D. 1913, in pursuance of the power in us vested by the said Indenture, do hereby alter, change and modify the said Indenture or Trust Deed, as the same has been heretofore amended by us, as follows, viz:

By changing and altering Articles II, III and IV of said Indenture, so that the same, from and after the date of the delivery of this instrument to the said Trustees, shall be in force and read as follows, viz:

"Article II.

The Trustees shall have power and authority at any time and from time to time,—

(1) To receive and collect all dividends declared and paid upon any shares of stock at any time subject to the terms of this agreement, and the interest upon all moneys, bonds or other obligations at any time held by them hereunder, and to collect and receive any and all rents, and any and all sums of money at any time payable with respect to any of the property, real or personal, which is subject to the provisions of this agreement.

(2) To sell, convey, transfer and assign any or all of the stocks, bonds, obligations, securities and property, real or personal, held by said Trustees under this instrument, and to

invest and reinvest the proceeds thereof, and the net income derived

2

therefrom, which shall not be disturbed as hereinafter provided, in accordance with any directions given in writing, signed by any two of the following persons, viz: John P. Wilson, Jr., Martha Wilson, and Anna W. Dickinson.

No change shall be made by said Trustees in the investments held in trust by them without the written direction or approval of two of the persons above named, so long as two of them shall survive; and said Trustees shall be authorized to make any and every change in the investments held in trust which shall be directed or approved as aforesaid; and said Trustees shall be free from any liability or responsibility for any action taken by them which shall be done under or in pursuance of such written direction or approval.

In no event shall any purchaser from the Trustees, or any other person or corporation, be required to ascertain the authority and power of the Trustees to make any sale, transfer, assignment or delivery of any securities, real estate or other property held hereunder. But such purchaser, and all other parties dealing with the Trustees with respect to the property held by them, shall be entitled to rely upon the delivery, transfer or assignment of any securities or real estate by the Trustees as having been in all respects fully authorized, and shall not be affected by any notice to the contrary, or be required to see to the application of the purchase money.

71 3

(3) To exercise the voting power upon all shares of stock held by the Trustees hereunder, and to exercise every power, election and discretion, give every notice, make every demand and do every act and thing in respect of any shares of stock and bonds or other obligations and securities held by the Trustees hereunder which they could or might do if they were the absolute owners thereof.

(4) To sell, convey, lease and improve any real estate which shall at any time be held in trust by said Trustees under this instrument, and to do all other acts in relation to the said real estate which in the judgment of said Trustees shall be needful and desirable to the proper and advantageous management thereof, so as to protect the same and make the same productive; it being intended that said Trustees shall have the same powers in regard to the selling, conveying, leasing

and improving said real estate, and otherwise managing the same, which said Trustees would possess and have were they the absolute owners thereof, free from any trust whatsoever.

In making investments of trust funds said Trustees shall be free in their discretion to make investments in any and every kind of property, real and personal, including the stock of corporations, without any limitation or restriction whatever, except as hereinbefore specifically provided.

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Article III.

(1) The trust funds and estate held under this Trust Indenture shall be kept divided by said Trustees into three (3) equal parts, each of which shall be held and administered as a separate trust for the benefit respectively of one of the three children of said party of the first part, hereinbefore named, subject, however, to the conditions, limitations and provisions hereinafter set forth.

A separate account shall be kept by the said Trustees of each of said trusts, and the investments in each of said separate trusts shall at all times be kept the same, both in kind and quantity, as near as may be, and to the end joint investments may be made by the Trustees on behalf of said separate trusts, each trust contributing an equal amount of the funds used in making such joint investments.

Any and all additions to the trust estate held under this Indenture (other than those from the accumulation of income from the separate trust estates) shall be divided between said separate trust estates held under this Indenture, in equal shares or parts, except and unless it shall be otherwise directed in the instrument of gift making an addition to the trust estate held under this Indenture.

Any property belonging to said trust estate may be taken and held for convenience in the name of a nominee of the said Trustees, or in the name of either of said Trustees, or in the name of said Trustees as joint tenants, without the addition of the word

72 5

"Trustee" or "Trustees," or words indicating that such property is held in trust.

(2) The said Trustees shall in each year pay out as much of the net income from each of said separate trusts to the

beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustees shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustees shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in

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pursuance of a written request signed as aforesaid.

Any request in writing for the distribution of any part of the income of any of said trusts may be signed by the guardian of any beneficiary who may be a minor or under disability, with like effect as though such request had been signed by the beneficiary in person, free from disability.

(3) From and after the death of any one of the original beneficiaries under this Indenture, the net income which he or she would have been entitled to receive if living, shall be paid to the issue of said party of the first part, in accordance with any directions in regard thereto contained in the last will and testament of such deceased beneficiary, and in default of any such direction or appointment then to the issue surviving from time to time, if any, of such deceased beneficiary, per stirpes; and in default of such issue then to the issue surviving from time to time of the said party of the first part, per stirpes.

Article IV.

Distribution of Principal of Trust Estate.

(1) The trust hereby created shall in any and the latest event terminate at the death of the survivor of Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and said trust may be terminated, in whole or in part, at any time by an instrument in writing signed by the said three children of the first party, or the survivors or survivor of them, upon the delivery of such written instrument to the said Trustees; provided,

73 7

however, that during the life of said first party such written instrument must have the written approval of said first party.

(2) Upon the termination of the trust established by this Indenture, the several trust estates then held hereunder for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living, the trust estate which such deceased beneficiary would have been entitled to receive, if living, shall be paid over and delivered to the then surviving issue of the said party of the first part, in such shares and interests and subject to such trusts as may be directed in and by the last will and testament of such deceased beneficiary; and in default of any such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary, per stirpes; and in default of such surviving issue, then to the surviving issue of the said party of the first part, per stirpes."

In Witness Whereof we have hereunto set our hands and seals, this sixth day of December, A. D. 1920.

MARTHA WILSON (Seal)
JOHN P. WILSON JR. (Seal)
ANNA W. DICKINSON (Seal)

I approve the foregoing instrument and the changes thereby made.

December 14th, A. D. 1920.

JOHN P. WILSON.

State of Illinois, } ss.
County of Cook. }

I, Edwin L. Johnson, a Notary Public in and for said County, in the State aforesaid, do hereby certify that John P. Wilson, Jr., and Martha Wilson, personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 14th day of December, A. D. 1920.

EDWIN L. JOHNSON
Notary Public.

(Notarial Seal).

State of California, } ss.
County of Santa Barbara. }

I, Pauline M. Finley, a Notary Public in and for said County, in the State aforesaid, do hereby certify that Anna W. Dickinson, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that she signed, sealed and delivered the said instrument as her free and voluntary act, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal, this 10th day of December, A. D. 1920.

PAULINE M. FINLEY
Notary Public.

(Notarial Seal)

My Commission Expires June 13, 1922.

74 State of California, } ss.
County of Santa Barbara. }

I, C. A. Hunt, County Clerk of the County of Santa Barbara, and also Clerk of the Superior Court for the said County; the same being a Court of Record, do hereby certify that Pauline M. Finley whose name is subscribed to the certificate or the proof of acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such

proof of acknowledgment, a Notary Public in and for said County of Santa Barbara, dwelling in said County, commissioned and sworn and authorized by the laws of said State to take the proof or acknowledgment of deeds and other instruments in writing to be recorded in said State, and to administer oaths or affirmations in said County. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to the said certificate of proof of acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 10th day of December A. D., 1920.

C. A. HUNT
Clerk.

(Superior Court Santa Barbara Co. Cal.)

7912473

State of Illinois } ss No
Cook County }

Filed for Record
1923 May 3 AM 11 56
And Recorded in Book 18630 of Records Page 296
JOSEPH F. HAAS
Recorder

Filed July 6, 1931. 75 UNITED STATES BOARD OF TAX APPEALS.

* * (Caption—57226) * *

ANSWER.

Filed Jul 6, 1931.

The Commissioner of Internal Revenue by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition filed in the above-entitled appeal, admits and denies as follows:

1. Admits that the petitioners are residents of Cook County, in the State of Illinois, and have their principal office at 140 South Dearborn Street, Chicago, Illinois. Admits that petitioners are Trustees under Deed of Trust of John P. Wil-

son. Denies all other allegations contained in said paragraph of the petition.

2. Admits that a notice of deficiency was mailed to the petitioner on March 7, 1931. Denies that the copy attached to the petition and marked Exhibit "A" is a correct copy of the deficiency notice as alleged in that in the seventh line of paragraph 2 form 1041 is quoted whereas it should have been form 1040.

3. Admits the allegations contained in paragraph 3 of the petition.

76 4. Denies the allegations of error set forth in paragraph 4 of the petition, sub-paragraphs (a) to (c), inclusive.

5. Admits that on March 19, 1913, John P. Wilson set up a trust with William B. McIlvaine and John P. Wilson, Jr., as Trustees for the benefit of his three children, Martha Wilson, Anna W. Dickinson and John P. Wilson, Jr. Denies all other obligations contained in paragraph 5 of the petition.

Denies generally and specifically each and every allegation contained in the taxpayer's petition not hereinbefore admitted, qualified or denied.

Wherefore, it is prayed that the taxpayer's appeal be denied.

(Signed) C. M. CHAREST
C. M. Charest,
General Counsel, Bureau of Internal Revenue.

Of Counsel:
F. R. SHEARER,
Special Attorney, Bureau of Internal Revenue.

94 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

Statement of Evidence filed Aug. 2, 1934.

For the Seventh Circuit.

Guy T. Helvering, Commissioner of Internal Revenue, *Petitioner*, *v.* William B. McIlvaine and John P. Wilson, Jr., Trustees under Deed of Trust of John P. Wilson, *Respondent*. } B. T. A. Nos. 52931, 57226.

STATEMENT OF EVIDENCE.

Received Jul 2, 1934.

Lodged Jul 2, 1934.

Filed Aug 2, 1934.

The following is a statement in narrative form of the evidence in the proceedings instituted before the United States Board of Tax Appeals by petitions filed February 16, 1931, and April 25, 1931, captioned "William B. McIlvaine and John P. Wilson, Jr., Trustees of Deed of Trust of John P. Wilson, Petitioner, *v.* Commissioner of Internal Revenue, Respondent," and bearing docket numbers 52931 and 57226, respectively.

The proceedings came on for hearing pursuant to a notice on October 5, 1932, at Washington, D. C., before the Honorable Herbert F. Seawell, Member of the United States Board of Tax Appeals, whereupon the following proceedings were had, and testimony and documentary evidence heard and received:

Clay Judson, Esq., and John P. Wilson, Esq., appeared on behalf of "William B. McIlvaine and John P. Wilson, Jr., Trustees of the Deed of Trust of John P. Wilson" (hereinafter sometimes referred to as "taxpayer").

95 F. R. Shearer, Esq., and E. L. Updike, Esq. (C. M. Charest, General Counsel, Bureau of Internal Revenue) appeared on behalf of the Commissioner of Internal Revenue (hereinafter referred to as "Commissioner").

The following stipulation was offered by counsel for taxpayer and was duly received in evidence as TAXPAYER'S EXHIBIT NO. 1:

"UNITED STATES BOARD OF TAX APPEALS.

"William B. McIlvaine and John P. Wilson, Jr., Trustees under Deed of Trust of John P. Wilson,
Petitioners,
v.
Commissioner of Internal Revenue,
Respondent.
} Docket Nos. 52931, 57226.

STIPULATION.

"It is hereby stipulated and agreed by and between the parties hereto as follows:

"1. The Board may consolidate these two proceedings for hearing and decision.

"2. These proceedings are to be submitted to the Board upon a single issue, namely, whether that part of the income from the property held in trust by the petitioners under the deed of trust of John P. Wilson dated March 19, 1913, as amended, which was not distributed or distributable to the beneficiaries thereof in the respective years involved herein (there being no controversy in respect of the amount of such income) should be subjected to income taxes on the basis of a single trust and a single return (1040) for each year as held by the Commissioner, or on the basis of three separate trusts and three separate returns (1040) for each year as contended by the petitioner. All other issues are waived and no new issues will be raised.

"3. Both parties hereto reserve the right to offer and introduce competent and material evidence relevant to the issue above-mentioned.

"4. In the event the issue above-mentioned be finally determined and decided in favor of the petitioners, an order of redetermination may be entered finding that there are no
96 deficiencies due from these petitioners and that there are no overpayments due to these petitioners in respect of their Federal income tax liability as trustees under said deed

of trust dated March 19, 1913, as amended, for the calendar years 1924, 1925, 1926 and 1928.

"5. In the event the above-mentioned issue be finally determined and decided against the petitioners and in favor of the respondent, the following is a correct statement in respect of petitioners' Federal income tax liability as trustees under said deed of trust dated March 19, 1913, as amended, for the calendar years 1924, 1925, 1926 and 1928, and in that event the Board may enter an order of redetermination for the amounts designated below as deficiencies to be assessed for each of said years:

"Year 1924.

"Tax liability		$20,949.69
Tax assessed:		
On return of William B. McIlvaine and John P. Wilson, Jr., as trustees of John P. Wilson, Jr., Trust, under deed of trust of John P. Wilson dated March 19, 1913, Account No. 302145	$2,509.96	
On return of William B. McIlvaine and John P. Wilson, Jr., as trustees of Anna W. Dickinson Trust under deed of trust of John P. Wilson dated March 19, 1913, Account No. 302144	2,509.96	
On return of William B. McIlvaine and John P. Wilson, Jr., as trustees of Martha Wilson Trust, under deed of trust of John P. Wilson dated March 19, 1913, Account No. 302143	2,509.96	7,529.88
Deficiency to be assessed		$13,419.81

97 "Year 1925.

"Tax liability		$13,758.96
Tax assessed:		
On return of Willliam B. McIlvaine and John P. Wilson, Jr., as trustees of John P. Wilson, Jr., Trust, under deed of trust of John P. Wilson dated March 19, 1913, Account No. 300809	$2,248.83	
On return of William B. McIlvaine and John P. Wilson, Jr., as trustees of Anna W. Dickinson Trust, under deed of trust of John P. Wilson dated March 19, 1913, Account No. 300808	2,248.83	
On return of William B. McIlvaine and John P. Wilson, Jr., as trustees of Martha Wilson Trust, under deed of trust of John P. Wilson dated March 19, 1913, Account No. 300807	2,248.83	6,746.49
Degciency to be assessed		$7,012.47

"Year 1926.

"Tax liability		$11,045.29
Tax assessed:		
On return of William B. McIlvaine and John P. Wilson, Jr., as trustees of John P. Wilson, Jr., Trust, under deed of trust of John P. Wilson dated March 19, 1913, Account No. 325213	$2,118.39	
On return of William B. McIlvaine and John P. Wilson, Jr., as trustees of Anna W. Dickinson Trust, under deed of trust of John P. Wilson dated March 19, 1913, Account No. 325212	2,118.39	
On return of William B. McIlvaine and John P. Wilson, Jr., a strustees of Martha Wilson Trust, under deed of trust of John P. Wilson dated March 19, 1913, Account No. 325214	2,118.39	6,355.17
Deficiency to be assessed		$4,690.12

98 "Year 1928.

"Tax liability		$7,149.52
Tax assessed:		
On return of William B. McIlvaine and John P. Wilson, Jr., trustees of John P. Wilson, Jr., Trust, under deed of trust of John P. Wilson dated March 19, 1913, Account No. 301732	$523.96	
On return of William B. McIlvaine and John P. Wilson, Jr., trustees of Anna W. Dickinson Trust, under deed of trust of John P. Wilson dated March 19, 1913, Account No. 301733	523.96	
On return of William B. McIlvaine and John P. Wilson, Jr., trustees of Martha Wilson Trust, under deed of trust of John P. Wilson dated March 19, 1913, Account No. 301731	523.96	1,571.88
Deficiency to be assessed		5,577.64

"6. Nothing herein contained shall be considered as a waiver by either part yof its right to petition for review or otherwise appeal from the decision of the Board on the reserved issue above-mentioned.

"JOHN P. WILSON
CLAY JUDSON
Attorneys for Petitioners.
C. M. CHAREST
General Counsel, F. R. S. Bureau of Internal Revenue, Attorney for Respondent."

Whereupon JOHN P. WILSON was called as a witness on behalf of taxpayer, and being duly sworn, was examined and testified as follows:

99 *Direct Examination.*

My name is John P. Wilson. Prior to my father's death in 1922, I was known as John P. Wilson, Jr. I live at Chicago. I am fifty-five years old.

I am the person designated in the titles of the cases bearing Docket Nos. 52931 and 57226 as John P. Wilson, Jr. I am one of the trustees who are the petitioners in these cases.

I am familiar with the Trust Indenture and all the amendments thereto involved in these cases. The document now exhibited to me is a true copy of the Trust Indenture in question, with all amendments thereto. I personally compared that document with the original at the time it was printed.

(Thereupon said document was offered by counsel for the taxpayer and without objection by counsel for the Commissioner duly received in evidence as TAXPAYER'S EXHIBIT NO. 2. The document attached to the petition filed with the Board of Tax Appeals in the proceeding bearing Docket No. 57226 as Exhibit 'B' is a true and correct copy of taxpayer's Exhibit No. 2 and is by reference made a part of this Statement of Evidence.)

The documents now exhibited to me are the original copies of the trust indentures and the amendments thereto. The instrument bearing date of March 19, 1913, is a duplicate original executed by John P. Wilson, William B. McIlvaine, and John P. Wilson, Jr. The second instrument bearing date of June 19, 1919, is the first amendment to said Trust Indenture of March 19, 1913 and is a duly executed original signed by Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, the only three then surviving children of John P. Wilson, and approved in writing at the foot by John P. Wilson under date of June 19, 1919. The third instrument, bearing

100 date of December 1, 1920, is the second amendment of the Trust Indenture of March 19, 1913, and is a duplicate original and is executed by Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and by John P. Wilson for the purpose of evidencing his approval of the execution, as stated in the instrument. The next document bears date of December 6, 1920, and is the third and last amendment to said Trust

Indenture of March 19, 1913, and is a duplicate original executed by Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and is signed at the foot by John P. Wilson for the purpose of evidencing his approval of the execution of the instrument.

The John P. Wilson who executed those instruments was my father. I signed my name to those instruments as John P. Wilson, Jr. The signatures of Martha Wilson and Anna W. Dickinson are the signatures of my sisters.

Taxpayer's Exhibit No. 2 is a true copy of the Trust Indenture and amendments thereto. It was checked by me personally with the original instruments at the time they were printed.

I know of my own personal knowledge when that part of the taxpayer's Exhibit No. 2 designated as the Indenture of March 19, 1913, was actually signed by John P. Wilson, William B. McIlvaine and John P. Wilson, Jr. That document was executed and delivered on March 19, 1913. I know this because the figures which are written in ink in the typewritten instrument are in my own handwriting and the acknowledgments were taken on the 19th day of March, 1913, in our own office, and I was present when they were delivered, and I am one of the trustees to whom they were delivered. I
101 am familiar with the signature of William B. McIlvaine and the signature appearing on that document is his signature.

The amendment bearing date of June 19, 1919, was executed by the parties named; Martin Wilson, John P. Wilson, Jr., and Anna W. Dickinson on the 19th day of June, 1919. It was acknowledged on the same date and signed by John P. Wilson, the creator of the trust, on the same date and delivered on that date. I know that because the ink date is in my own handwriting and it was executed in our office, and the practice was that when we had an approval of that character, for my father to sign after we had signed and that is the date upon which he signed that document. It was delivered to Mr. McIlvaine and myself as trustees on that date.

The amendment dated December 1, 1920, was prepared and dated on that date and was then sent to my sister, Anna W. Dickinson, who at that time resided in Santa Barbara, California, for her to sign. Her acknowledgment in California was under date of December 6, 1920. I, therefore, assume that she signed it on that date. The document was then returned to Chicago and signed by my sister, Martha Wilson and my-

self, and acknowledged under date of December 13, 1920, and on that date the document was delivered. It was also signed by my father on December 13, 1920.

The amendment dated December 6, 1920, was acknowledged by my sister, Anna W. Dickinson, on December 10, 1920. It was then returned to Chicago under date of December 14, 1920, and my sister, Martha Wilson and I signed and acknowledged the instrument. Also on the 14th day of ecember, 1920, John P. Wilson signed his approval, and on the same date
102 it was delivered to William B. McIlvaine and myself as trustees.

The Trust Indenture, including the amendments to which I have testified, was in full force and effect during the years 1924, 1925, 1926, and 1928, and is still in force and effect.

The documents from the files of the Bureau of Internal Revenue exhibited to me are the original returns filed by the trustees under the deed of trust of John P. Wilson dated March 19, 1913, for the year 1924 on Form 1040. At the bottoms of said returns are my signatures.

(Thereupon, said documents were offered by counsel for the taxpayer and duly received in evidence as TAXPAYER'S EXHIBITS NOS. 3, 4, and 5.)

I am familiar with the signature of William B. McIlvaine. He is my co-trustee under the Trust Indenture involved in this case. Each of the three documents from the files of the Bureau of Internal Revenue now exhibited to me bear his signature.

(Thereupon, said documents were offered by counsel for the taxpayer and duly received in evidence as TAXPAYER'S EXHIBITS NOS. 6, 7, and 8.)

Each of the three documents from the files of the Bureau of Internal Revenue now exhibited to me bear my signature.

(Thereupon, said documents were offered by counsel for the taxpayer and duly received in evidence as TAXPAYER'S EXHIBITS NOS. 9, 10, and 11.)

Each of the three documents from the files of the Bureau of Internal Revenue now exhibited to me bear my signature.

In all of these cases, of course, they are signed as trustees.

103 (Thereupon, said documents were offered by counsel for the taxpayer and duly received in evidence as TAXPAYER'S EXHIBITS NOS. 12, 13, and 14.)

The tax returns which have been marked Exhibits 3 to 14, inclusive, were filed with the Collector of Internal Revenue

at Chicago, Illinois. The tax shown to be due by each of these returns has been paid in full.

I have been, as trustee under and pursuant to the instrument and the amendments thereto introduced as Exhibit No. 2, actively engaged from the time of the delivery of the original instrument in March, 1913, in the administration of the trust, or trusts, created by said instrument and the amendments thereto. I am familiar with the administration and of the accounts of the trustees.

Prior to June 19, 1919, when the amendment of that date became effective, Mr. McIlvaine and I, as trustees, kept our accounts as a single trust, in which the three beneficiaries were interested, and all the transactions were entered in a single book as a single trust.

From and after June 19, 1919, the effective date of the first amendment, the books of the trustees, under the trust deed, were kept as three separate and distinct trust accounts. The principal account, or the capital account, was divided into three equal parts, one of such parts being assigned to each of the separate trusts; and in accordance with that a separate account was entered for each of the trust estates, and have been kept in that manner ever since.

The books now exhibited to me is the original book of accounts in connection with the administration of the affairs of the trust beginning with its inception on March 19, 1913. I don't know what date it runs to but it is the original account book. Page 1 of the account book, to which I have just testified, reads "Accounts of William B. McIlvaine and John
104 P. Wilson, Jr., as trustees under a certain Trust Agreement dated March 19, 1914." Following on that page under date of Madch 19, 1913, there is a list of several stocks which constituted the original corpus of the trust, which by comparison with the items on the first page of the Trust Indenture will prove to be the same. The entries appearing on pages 26 and 27 of said book constitute one of the items of the capital account and at the bottom of the page of the income and expenses with reference to a particular item of stock. Said entries represent the type of entries that were made throughout the account up until June 19, 1919. The account appearing on page 150 of said book is a continuation of the account shown upon page 26 of the book. The document now exhibited to me is a photostatic copy of pages 26 and 27 of the account book, to which I have just referred.

(Thereupon, said documents were marked taxpayer's Exhibit No. 15 for identification.)

The document now exhibited to me is a photostatic copy of pages 150 and 151 of the account book with respect to which I have just testified.

(Thereupon, said document was marked as taxpayer's Exhibit No. 16 for identification. Taxpayer's Exhibits Nos. 15 and 16 for identification were offered by counsel for the taxpawer and duly received in evidence as TAXPAYER'S EXHIBITS NOS. 15 and 16.)

The document now exhibited to me is an original loose-leaf page taken from the original accounts of William B. McIlvaine and myhelf as trustees under the deed of trust of John P. Wilson dated March 19, 1913, and relates to the interest in the Maywood Land Association assigned to the
105 Trust of Anna W. Dickinson on the books as of July 1, 1919, and shows an undivided one-third of the shares of stock of the company named. The entries appearing on said document are the first entries, original entries, showing the transfer, after the amendment of June 19, 1919, of the property referred to in Exhibits Nos. 15 and 16. The document now exhibited to me is a photostatic copy of the original sheet, to which I have just testified. The books of the trustees are of a very heavy corduroy type, subdivided into three parts. They are all under one of these big heavy binders with poles. You may say there are three separate and distinct accounts, but under one heavy cover, with poles in it. That is the type of account that has been kept ever since June 19, 1919.

(Thereupon, the photostatic document mentioned was offered by counsel for taxpayer and duly received in evidence as TAXPAYER'S EXHIBIT NO. 17.)

The document now exhibited to m eis an original page from the original accounts of William B. McIlvaine and myself as trustees of the trust in question, or under the Trust Indenture of March 19, 1913, as amended, and this page shows also the same subject matter with reference to the item in the trust account, the Maywood Land Association, and indicates a one-third interest transferred and set up in behalf of my sister, Martha Wilson Trust, immediately after the amendment of June 19, 1919 became effective. The document now exhibited to me is a photostatic copy of the page with reference to which I have just testified.

(Thereupon, said photostatic document was offered by coun-

sel for taxpayer and duly received in evidence as TAXPAYER'S EXHIBIT NO. 18.)

106 The document now exhibited to me is an original page of the original loose-leaf account kept by William B. McIlvaine and myself as trustees under the deed of trust of March 19, 1913, as amended. It has reference to the Maywood Land Association, the same item as was referred to in the last two pages which I have identified, and which indicates a division of the interest in that property which was owned and on hand at the time the amendment of June 19, 1919, became effective. The document now exhibited to me is a photostatic copy of the original page in our books, to which I have just referred, which relates to the John P. Wilson, Jr., Trust.

(Thereupon, said photostatic document was offered by counsel for taxpayer and duly received in evidence as TAXPAYER'S EXHIBIT No. 19.)

Exhibits Nos. 17, 18, and 19 are typical of the accounts kept by me and Mr. McIlvaine as trustees, since the amendment to the Trust Indenture of June 19, 1919. An examination of the original records will disclose that each and every item which constituted part of the principal of the Trust on June 19, 1919, were, after the amendment of that date became effective, divided into three equal undivided parts, and assigned one each to the separate trusts which were then established, one in the name of my sister, Martha Wilson, one in the name of Anna W. Dickinson, and one in my name, and separate accounts were kept as is disclosed by Exhibits Nos. 17, 18, and 19 of all of the property interests. The accounts of the trustees ever since the amendment of June 19, 1919, have uniformly been kept as three separate and distinct trust accounts in all matters pertaining to the several trusts,

107 as indicated by the change made when the amendment of June 19, 1919, became effective. Exhibits Nos. 17, 18, and 19 are typical of the treatment since June 19, 1919, of all such property in the accounts regardless of when the property was acquired.

My sister, Martha Wilson, died December 25, 1923. My sister, Anna W. Dickinson, is still living.

Q. "Since the death of Martha Wilson, your sister, have the properties held in the trust which you and Mr. McIlvaine designated by her name, been continued to be held separately and separately accounted for, as indicated by Exhibits 17, 18 and 19?"

A. "They have."

My sister, Martha Wilson, did not execute any power of appointment under this trust instrument by her will or otherwise. My sister, Martha Wilson, was never married. She died without issue.

Cross-Examination.

In opening the new ledger as of July 1, 1919, the accounts set up on that ledger were in the nature of a proprietorship account in the individual names of the three beneficiaries. That showed the accounts as they had previously stood and divided them in accordance with the terms of the amendment of June 19, 1919, in three separate and distinct interests, giving to each one an undivided one-third; and in accordance with that, accounts were set up for the three separate trusts created by that instrument, one in my name, one in my sister's name, Martha Wilson, and one in the name of my sister, Anna W. Dickinson. For each asset held by the trustees 108 in June, 1919, three ledger sheets were opened, of which the three exhibits that have been introduced in evidence are typical. There were no other ledger sheets opened on the books of the trust, crediting myself and my two sisters with our respective interest in the assets seld under the deed, so far as I know. We simply kept accounts charging ourselves—with the several items of property which were held in the varioutes trusts,—these accounts, themselves, show the interest of the several beneficiaries as individuals, because of their interest here, when we charged ourselves with them.

Our accounts were kept very simply and are simply an enlargement and extension of the little book you see there. We never opened up a complete set of books, a full double entry set of books, because our accounts are comparatively simple and there is no occasion for a journal account.

The red figures "49" and "55" on these ledger sheets look as if they were referring to the pages of a journal. I think there probably was a journal at that time. The journal was a book of original entry. The sheets that I have produced here are postings from the journal. I think in place of calling it a journal I will call it our ledger. I may be wrong in my technical term of bookkeeping because I don't pretend to be a technical bookkeeper. Of course, we had a book of original entry, and these would be postings from that. These are not items of original entry, except for the first item at the top of the page. There are no items on these sheets showing income

or expenses from 1924 to 1928. On these income and expense accounts, I am not prepared to make a positive statement whether we kept three journals or one journal. My recollection is that we had one account book with separate accounts as they came, and items belonging to each one of them are entered under their own heading. That is the way we have kept the accounts; I am quite clear about that—and they
109 will be transferred and posted to the separate accounts. That is, all of the cash in and out would be under the heading of the particular trust.

After July 1, 1919, if the trustees received $1,000 dividends on the shares of stock in a particular company that $1,000 would be divided when it came in into one-thirds and credited to each of the different accounts. My recollection is not perfectly clear whether as a matter of fact there was but one account on the journal, an income account labeled "Dividends" to which the whole $1,000 was entered. There may have been a cash account that was a common account of the trustees, and it was immediately divided. That I can not tell you, because I have not checked it up and don't remember. I do not believe that we have with us today the ledger sheet for the cash as kept by the trustees after July 1, 1919. I can not say whether we kept one cash ledger or not.

On each of the Exhibits 17, 18 and 19 on the bottom half of the page there are two entries which appear to be identical. The first one has one column appropriate for a journal folio, the figures in red, "49"; and the second one in the same column has figures in red, "55". It is true that those posting figures "49" and "55" refer to the page number in the account book of the trustees. There were not three pages 49 in the account book and three pages 55. In each instance those refer to the same page of the same account, and there may also be on each one of those pages three entries because it refers to the receipts. I think that is an account of original entry. I can not tell you whether the trustees kept accounts of original entry, with a page divided into three sections, labeled "John P. Wilson, Jr., Martha Wilson, and Anna W. Dickinson". I can not tell you whether we had it divided that way, or whether the original receipt was in
110 one item, or whether they were in three separate items.

The trustees kept one bank account after July 1, 1919, and all of the receipts of cash went into the bank account and all of the disbursements of cash came out of that bank account.

The shares of stock of the Maywood Land Association did not multiply by three nor were they three times as much in 1919 as in 1913.

Q. "Then what was the occasion of posting the items to the new ledger accounts three times as great as the same item was in the old ledger?

A. "We did not do anything of that kind.

Q. "I submit, Mr. Witness, that the exhibits already introduced in evidence show that that occurred.

A. "We assigned an undivided one-third interest in the total number of shares. That does not multiply them by three.

Q. "But in carrying the figures up as representing that with which you were charged, is it not true that you have charged yourself with three times as much on these new ledger accounts as you had charged yourself with on the old ledger accounts, for the same assets?

A. "No; we charged ourselves, in each one of those cases, with an undivided one-third interest, setting up the description of the total item and—

Q. "But you did carry out on each ledger sheet the same total that occurred on the first ledger sheet as one item?

A. "I don't recall that, because it is merely descriptive, and the total item is the total value of the item—27 and 25 is the total value of the item, but the item to the particular separate trust was an undivided one-third interest in it.

111 Q. "That is the description, but when you came to carry out the amount, you carried out the total, didn't you, on each one?

A. "That is merely descriptive of the total, which is perfectly obvious from the entry."

On July 1, 1919, we had one certificate of the shares of the Maywood Land Association. That was apparently the certificate which was issued in my father's name. In the fall of 1919, we apparently turned in that old certificate and got a new certificate. We got just one certificate. I do not have the certificate with me today. The ownership of those shares of stock was not shown on the certificate itself. All our stocks are carried in the names of William B. McIlvaine and John P. Wilson, Jr., as trustees under the deed of trust of John P. Wilson, dated March 19, 1913. That is not only true of the Maywood Land Association shares, but it is true of all of the shares of stock that we owned on July 1, 1919, and that we have acquired since. There is a large number of them

which stand in the names simply of William B. McIlvaine and myself as joint tenants. If you will observe in the instrument itself, we are authorized to carry them that way, and there were many instances when we did carry them that way, so that when we came to make transfers of the stock, we did not always have to show the trust instrument, and it facilitated the transfers of the stock.

But if you are asking me whether or not our practice, in so far as we had it in the names of the trustees is concerned, it is true we have our certificates in the name of William B. McIlvaine and myself as trustees under the deed of trust of John P. Wilson, dated March 19, 1913.

I think the trustees received a few bonds in 1913 as a part of the corpus. Those were coupon bonds.

112 The trust held real estate, which was perhaps the most substantial part of the trust. The real estate was conveyed in every instance to William B. McIlvaine and myself as joint tenants, and we simply executed declarations of trust, and that was merely a matter of convenience in handling it, because, otherwise, we would have had to put the indenture of record and handle it that way. That occurred prior to July 1, 1919. Prior to 1919, we did away with the declarations of trust and decided to have the real estate held as trustees. After June 19, 1919, Mr. McIlvaine and I did not execute new declarations of trust showing that we were holding the real estate for the benefit of three separate trusts; nor did we divide our cash into three bank accounts at that time. Now we have the real estate carried in three separate accounts as a matter of bookkeeping. In all deeds, Mr. McIlvaine and I described ourselves as trustees of the deed of trust of John P. Wilson, dated March 19, 1913. My recollection is that in transferring the real estate from our names as joint tenants to ourselves as trustees, we executed one deed for the entire ownership and not three deeds for an undivided one-third each.

At the time of the amendment in 1919 substantially all of the assets of the trust consisted of stock, real estate, and cash.

Q. "So, none of the assets held by the trustees were separated, in connection with this amendment. But the alleged interest, under the names of the three persons, were all carried as undivided interests; is that right?

A. "They were carried as undivided interests, so far as the real estate went. As you have stated, we never gave sep-

arate deeds. It would not accomplish anything to do it that way. We were permitted, under the express terms of the indenture, as far as the stocks were concerned, to carry them in the name of a nominee, or as joint tenants, or in any
113 way we chose. You will find that that is expressly provided in the terms—in and by the terms of the amendment, that we were expressly authorized to carry them in that way, and we did it as a matter of convenience, because of the express authorization and—

Q. "But no effort was made, was there, in the case of any particular stocks, to have the certificates issued for one-third of the shares in one certificate, another one-third in another certificate, and another one-third in another?

A. "That is true, because the amendment contains this provision—the amendment of December 6, 1920, contains this provision:

"'The entire property belonging to said trust estate may be taken and held for convenience in the name of a nominee of said trustees, or in the name of either of said trustees, or in the name of said trustees as joint tenants, without the addition of the words "Trustee or Trustees," or words indicating that such property is held in trust.'

"As a matter of convenience in making transfers and sales, we put them in a form that would be more simple for us, and I could not tell you exactly—

Q. "And as a matter of fact, for all purposes except the ledger accounts, you treated it as one trust, didn't you?

A. "It has been treated by us on all occasions as three separate trusts ever since June, 1919.

Q. "In what respect, other than the ledger accounts themselves, have you treated this as three separate trusts—and also including the exhibits that are in evidence in the income tax returns?

114 A. "I know of no other way in which we could.

Q. "You did not divide the real estate?

A. "No.

Q. "You did not divide the certificates of stock, the shares of stock, that were held?

A. "No.

Q. "And you did not open separate bank accounts in the name of the trustees, or in the name of the trust for John P. Wilson, Jr.?

A. "No.

Q. "Or the name of the trust for Anna W. Dickinson?

A. "No.

Q. "Or the name of the trust for Martha Wilson?

A. "That is right."

The occasion for this amendment in 1919 was to be able to handle these trusts so that it would not lead to confusion in the event of death, so that we would be able to have the property separated and identified in the event of the death of one of the parties, which did happen. That might have been affected by the estate and inheritance taxes and been thrown out of line with the others; and as a matter of fact, under the terms of the indenture, the principal of that trust, on termination of the trust, goes in an entirely different manner from the principal of the other trust which was subject to powers of appointment. Unless you could clearly identify it and have it separated and distinct, it would have been impossible to go ahead and administer the trust.

I suppose the amendment in 1919 originated, primarily, 115 in my mind, to do something of the kind, because I was primarily responsible for the administration of the trust. One of my sisters lived in California and the other was a spinster, and they looked to me for advice, and if I suggested anything of the kind, they would be very likely to fall in line and agree to it. One of the purposes of the amendment was to provide against the contingency of the death of one of the parties and to have the interest clearly identified.

Q. "Clearly identified in what manner?

A. "Specific shares.

Q. "Specific pieces of property, or clearly identified by undivided interests?

A. "To have the interests all marked up perfectly clearly, so we would know exactly what the interests were and have them separated.

Q. "In other words, you wanted to prevent the possibility, in case there had to be a division through the termination of the trust, of one of you being required to take all of the shares of stock of the Maywood Land Association, for instance, as part of your share, and one of your sisters taking all of the stock of some other association? You wanted to make sure that every one of the three would get exactly one-third of each assets held by the trustees; is that right?

A. "No; the trust deed itself, which speaks for itself, clearly designates the wish here to have them kept as nearly as possible equally, it is true; and that was the wish—it was certainly one of mine, because when I was representing and

acting and determining questions, both as trustee and beneficiary, for myself and my sisters—if we had not had
116 that in there, so it would be kept in that shape, I would have been very much inclined to make a different type of investment in my own trust from what I would with the others, and if I happened to be successful, it would have resulted in my being more successful than my sisters, who were similarly situated. And the only solution for that seemed to be to keep them on a basis of equality. Naturally, they wanted it kept that way, too. There has been an effort, all the way through, to keep it on a basis of equality.

Q. "So the purpose was to bring about a situation where the interests of the three, or those that would step into their shoes in the event of death of one or more of you, would be on an equality with the other two?

A. "Just as far as we could keep it.

Q. "And you adopted this method to bring about that result, rather than let the interest remain as undivided beneficial interests in one trust?

A. "So it would all be in shape, divided in advance, and not have to make a division if that instance occurred.

Q. "But you did not divide it, did you?

A. "Yes, we did. The mere fact—that is argumentative, though. The instrument speaks for itself.

Q. "It is your understanding that the setting up of ledger accounts for the undivided interests constituted a division of the shares of stock?

A. "My understanding is that the instrument controls the entire situation, regardless of what the trustees did in carrying it out.

Q. "Now, aside from this matter of keeping the three interests—and by that, I use the term to include not only
117 you as an individual, but those who would step into your shoes, under the trust instrument, if anything happened to you—to keep it on terms of equality, aside from any other purpose, what other purpose did you have in mind in the adoption of that amendment in 1919?

A. "One other purpose that everybody has in their mind is, in the event of the accumulation of income, that our taxes would be less. In other words, that was a proper and legal method of avoiding the payment of higher taxes; but, in no case an evasion.

Q. "So, the motivating thing was the dodging of high taxes as represented by the Revenue Act of 1918?

A. "I have given you two reasons.

Q. "And the question as to whether the first reason is borne out by the documents themselves, is a matter of argument.

A. "I presume so."

From time to time after 1919 the trustees accumulated certain amounts of cash that it was necessary to reinvest. It was not possible under the terms of the trust, in making the reinvestments, to divide the cash into three funds and take one of these funds and invest it in certain securities and another fund and invest it in other securities, and the third fund and invest it in still other securities. What we did was, as I told you, already, we had one bank account. These investments could only be made on the instructions of the beneficiaries, or the majority of the beneficiaries. Those instructions, in each instance, were given, and the trustees were notified and directed to make certain investments in equal parts for the three trusts. That was true when it was necessary to invest the cash already on hand. I would 118 not make a new investment in the absence of written instructions. That is all in the instruments. We only had one bank account. The practice was to keep one fund and use one fund, and to get certain securities from that fund, on instructions from the majority of the beneficiaries.

Q. "And that those securities were entered on the ledger account, with the amount set out for the total cost on each account, but in the description it was described as an undivided interest; is that right?

A. "Well, you are asking me now a very broad question. Just what those entries were, in carrying them out, I could not tell you exactly. I know, in order to clarify it, a number of years ago we changed it, and instead of writing in an undivided one-third interest, as it is here, our books were kept with the specific number of shares, instead of showing that, so they would not show what you say.

Q. "I understood your testimony on direct examination to be that these exhibits that were introduced, were typical of all of the other entries.

A. "Typical in the sense that there were three separate and distinct accounts, and they were kept for a considerable length of time, showing, as I just stated, undivided interest; and then I cannot tell you exactly at what point they changed, but they changed to show the numbers of shares in each separate trust. Of course, to my mind, there is no difference;

it would always show one-third of the total number of shares we had in any stock, because the trusts were always kept equal, in accordance with the provisions of the trust."

119 In 1924 the accounts were still kept exactly as they were at the end of 1919, showing the undivided one-third interest, and showing the number of shares, and there was no division of shares, so far as those accounts were concerned, into separate certificates to each of the three trusts; because the trust had authorized us to carry them that way, or in any way we saw fit, and we never carried them that way, as I previously said.

The documents I have in my hand are ledger sheets similar to Exhibits 17, 18, and 19. At the head is, "Harris Trust & Savings Bank, a corporation, of Illinois". That ledger account purports to cover acquisitions by the trustees of certain shares of stock of that corporation. The trustees at that time did not invest $54,000 in 50 shares of that stock. They invested $18,000 in 50 shares of said stock. The whole amount of the investment, that is, $18,000, was posted on the three ledger sheets. We could not show the total number of shares, without showing the full item, if we were going to head it with the undivided one-third interest.

(Thereupon said documents were marked Commissioner's Exhibits A, B, and C for identification; and three other documents were marked Commissioner's Exhibits D, E and F for identification.)

The document taken from the files of the Bureau of Internal Revenue which has been marked for identification as Commissioner's Exhibit D bears my signature. That is what is known as Form 1041 and is one of the Forms 1041 which was filed by myself and Mr. McIlvaine as trustees under the deed of trust of John P. Wilson, dated March 19, 1913, for the calendar year 1924 and is the one which was designated as the Anna W. Dickinson trust.

120 The document marked for identification Exhibit E bears my signature and is another one of the documents filed by myself and Mr. McIlvaine as trustees under the trust deed of March 19, 1913, as amended, on Form 1041, for the calendar year 1924 and is the one which is designated as the Martha Wilson Trust.

The document marked Exhibit F for identification bears my signature and is the third document on Form 1041 filed by myself and Mr. McIlvaine as trustees of the John P. Wilson

trust deed dated March 19, 1913, as amended, for the calendar year 1924, and is designated at the top, "John P. Wilson, Jr., Trust".

(Commissioner's Exhibits D, E, and F for identification were all from the files of the Bureau of Internal Revenue. Thereupon, three other documents were marked Commissioner's Exhibits G, H, and I for identification.)

The signatures on Exhibits G and H are Mr. McIlvaine's. They are two of the original Forms 1041 filed by myself and Mr. McIlvaine as trustees under the deed of trust of March 19, 1913, as amended, for the year 1925.

Commissioner's Exhibit I is the retained copy of the third Form 1041 that was filed by myself and Mr. McIlvaine, as trustees under the trust deed, for the calendar year 1925.

(Exhibits G and H for identification were from the files of the Bureau of Internal Revenue. Thereupon three other documents were marked Commissioner's Exhibits J, K, and L for identification. Exhibits J and K were from the files of the Bureau of Internal Revenue and Exhibit L for identification was from the taxpayer's files.

Three other documents were marked Commissioner's Exhibits M, N, and O for identification, which counsel stipulated were documents on Form 1041 filed by Mr. McIlvaine and Mr. Wilson as trustees under the deed of trust dated March 19, 1913, and designated at the top, respectively, as follows: Exhibit M for the Martha Wilson Trust; Exhibit N for the John P. Wilson, Jr., trust; and Exhibit O, Anna W. Dickinson Trust. Exhibits J, K and L bear the designation "Fiduciary Return of Income for the Calendar Year 1926" and Exhibits M, N and O bear the designation "Fiduciary Return of Income for the Calendar Year 1927".

Counsel stipulated that three additional documents were Forms 1040, signed by John P. Wilson, Jr., which were filed by Mr. Wilson and Mr. McIlvaine as trustees under the deed of trust dated March 19, 1913, as amended, for the calendar year 1927. Said documents were marked Commissioner's Exhibits P, Q and R for identification.

Counsel stipulated that three additional documents produced from the Commissioner's files were Forms 1041, filed by Mr. McIlvaine and Mr. Wilson as trustees under the deed of trust dated March 19, 1913, as amended, for the calendar year 1928, and that all of said documents were signed by

John P. Wilson, Jr. Said three additional documents were marked Commissioner's Exhibits S, T, and U for identification.)

Redirect Examination.

Whenever we got either cash or property into the accounts of the trustees after June 19, 1919, we always immediately posted to the several accounts of the three separate trusts the undivided interest in such property or cash. We always have, in just the way that I have testified to, until recently, when, instead of indicating an undivided one-third interest in the total number of shares, there has been an actual division as entered on the books of the number of shares. That came about by reason of a change of bookkeeping.

(Thereupon, counsel for the Commissioner offered the documents previously marked for identification Exhibits A to U, inclusive, and the same were duly received in evidence as EXHIBITS A TO U, inclusive.)

122 So far as pertinent and material, Exhibits 3 to 19, inclusive, and Exhibits A to U, inclusive, are as follows:

EXHIBIT 3.

(Condensed.)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 12, 1925. It is stamped received, Collector of Internal Revenue, First District, Illinois, March 15, 1925. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

Individual Income Tax Return For the Calendar Year 1924.

William B. McIlvaine and John P. Wilson, Jr. as trustees of John P. Wilson, Jr. Trust, under deed of trust of John P. Wilson dated March 19, 1913.

Income.

Interest on Bank Deposits; Corporation Bonds, etc.	$4,630.69	
Rents and Royalties	12,223.59	
Profit from Sale of Real Estate, Stocks, Bonds, etc.	2,418.60	
Dividends on Stock of Domestic Corporations	17,311.16	
Other Income:		
Broadview Land Association liquidation dividends	41.67	
Total Income in Items 1 to 9		$36,625.71
Deductions		—0—
Net Income		$36,625.71
Total Tax		$ 2,509.90

123 EXHIBIT 4.

(Condensed.)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 12, 1925. It is stamped received, Collector of Internal Revenue, First District Illinois, March 15, 1925. Omitting the affidavit, the material portions of this document are as follows:

Form 1040

U. S. Internal Revenue
Individual Income Tax Return for Calendar Year 1924.

William B. McIlvaine and John P. Wilson, Jr. as trustees of Martha Wilson Trust, under deed of trust of John P. Wilson dated March 19, 1913.

Income.

Interest on Bank Deposits; Corporation Bonds, etc.	$4,630.69	
Rents and Royalties	12,223.59	
Profit from Sale of Real Estate, Stocks, Bonds, etc.	2,418.60	
Dividends on Stock of Domestic Corporations	17,311.16	
Other Income:		
Broadview Land Association liquidation dividends	41.67	
Total Income in Items 1 to 9		$36,625.71
Deductions		—0—
Net Income		$36,625.71
Total Tax		$ 2,509.96

124 EXHIBIT 5.

(Condensed.)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 12, 1925. It is stamped received, Collector of Internal Revenue, First District Illinois, March 15, 1925. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

Individual Income Tax Return for Calendar Year 1924.

William B. McIlvaine and John P. Wilson, Jr. as trustees of Martha Wilson Trust, under deed of trust of John P. Wilson dated March 19, 1913.

Income.

Interest on Bank Deposits; Corporation Bonds, etc.	$4,630.69	
Rents and Royalties	12,223.59	
Profit from Sale of Real Estate, Stocks, Bonds, etc.	2,418.60	
Dividends on Stock of Domestic Corporations	17,311.16	
Other Income:		
Broadview Land Association liquidation dividends	41.67	
Total Income		$36,625.71
Deductions		—0—
Net Income		$36,625.71
Total Tax		$ 2,509.96

125

EXHIBIT 6
(Condensed)

This document was subscribed and sworn to by William B. McIlvaine on March 5, 1926. It is stamped received, Collector of Internal Revenue, First District Illinois, March 6, 1926. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1925

William B. McIlvaine and John P. Wilson, Jr., as trustees of John P. Wilson, Jr., Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income			
Rents and Royalties		$ 2,013.25	
Dividends on Stock of Domestic Corporations		22,704.02	
Other Income.			
Bagdad Investment Co. liquidation dividends	$ 3,666.67		
Broadview Land Association liquidation dividends	166.67	3,833.34	
Total Income			$28,550.61
Deductions			—0—
Net Income			$28,550.61

Computation of Tax	
Tax on Net Income	$ 834.45
Tax on Capital Gain or Loss (12½% of Schedule D)	1,414.38
Total Tax	$ 2,248.83

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Cost	Net Gain
Real Estate S.E.Cor. State ½ and Congress Sts. ½	12/20/21 12/31/21	1/17/25	$61,315.06	$50,000.00	$11,315.06

126

EXHIBIT 7
(Condensed)

This document was subscribed and sworn to by William B. McIlvaine on March 5, 1926. It is stamped received, Collector of Internal Revenue, First District Illinois, March 6, 1926. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1925

William B. McIlvaine and John P. Wilson, Jr., as trustees of Anna W. Dickinson Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income

Rents and Royalties		$ 2,013.25	
Dividends on Stock of Domestic Corporations		22,704.03	
Other Income.			
Bagdad Investment Co. liquidation dividends	$3,666.67		
Broadview Land Association liquidation dividends	166.66	3,833.33	
Total Income			$28,550.61
Deductions			-0-
Net Income			$28,550.61

Computation of Tax

Tax on Net Income	$ 834.45
Tax on Capital Gain or Loss (12½% of Schedule D)	1,414.38
Total Tax	$ 2,248.83

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More Than Two Years.

Kind of Property	Date Acquired	Date Sold	Amount Received	Cost	Net Gain
Real Estate S.E. Cor. State 1/2 and Congress Sts. 1/2	12/20/21 12/31/21	1/17/25	$61,315.06	$50,000.00	$11,315.06

127 EXHIBIT 8
(Condensed)

This document was subscribed and sworn to by William B. McIlvaine on March 5, 1926. It is stamped received, Collector of Internal Revenue, First District Illinois, March 6, 1926. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1925

William B. McIlvaine and John P. Wilson, Jr., as trustees of Martha Wilson Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income

Rents and Royalties		$ 2,013.25	
Dividends on Stock of Domestic Corporations		22,704.03	
Other Income.			
Bagdad Investment Co. liquidation dividends	$3,666.67		
Broadview Land Association liquidation dividends	166.66	3,833.33	
Total Income			$28,550.61
Deductions			-0-
Net Income			$28,550.61

Computation of Tax

Tax on Net Income	$ 834.45
Tax on Capital Gain or Loss (12½% of Schedule D)	1,414.38
Total Tax	$ 2,248.83

Schedule D—Capital Net Grain or Loss from Sale of Assets Held More Than Two Years.

Kind of Property	Date Acquired	Date Sold	Amount Received	Cost	Net Gain
Real Estate S.E. Cor. State ½ and Congress Sts. ½	12/20/21 12/31/21	1/17/25	$61,315.06	$50,000.00	$11,315.06

128

EXHIBIT 9
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on February 15, 1927. It is stamped received, Collector of Internal Revenue, First District Illinois, March 10, 1927. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1926

William B. McIlvaine and John P. Wilson, Jr., as trustees of John P. Wilson, Jr., Trust under deed of trust of John P. Wilson dated March 19, 1913.

	Income	
Profit from Sales of Real Estate, Stocks, Bonds, etc.	$17,765.07	
Dividends on Stock of Domestic Corporations	19,361.24	
Other Income.		
Broadview Land Association, liquidating dividends	83.33	
Total Income		$37,209.64
Deductions		-0-
Net Income		$37,209.64
Total Tax		$ 2,118.39

129 **EXHIBIT 10**
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on February 15, 1927. It is stamped received, Collector of Internal Revenue, First District Illinois, March 10, 1927. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN
FOR CALENDAR YEAR 1926

William B. McIlvaine and John P. Wilson, Jr., as trustees of Anna W. Dickinson Trust under deed of trust of John P. Wilson dated March 19, 1913.

	Income	
Profit from Sales of Real Estate, Stocks, Bonds, etc.	$17,765.07	
Dividends on Stock of Domestic Corporations.	19,361.24	
Other Income.		
Broadview Land Association, liquidating dividends	83.33	
Total Income		$37,209.64
Deductions		-0-
Net Income		$37,209.64
Total Tax		$ 2,118.39

130

EXHIBIT 11
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on February 15, 1927. It is stamped received, Collector of Internal Revenue, First District Illinois, March 10, 1927. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1926

William B. McIlvaine and John P. Wilson, Jr., as trustees of Martha Wilson Trust, under deed of trust of John P. Wilson dated March 19, 1913.

Income		
Profit from Sales of Real Estate, Stocks, Bonds, etc.	$17,765.07	
Dividends on Stock of Domestic Corporations.	19,361.26	
Other Income.		
Broadview Land Association, liquidating dividends	83.34	
Total Income		$37,209.67
Deductions		-0-
Net Income		$37,209.67
Total Tax		$ 2,118.39

131

EXHIBIT 12
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on February 23, 1929. It is stamped received, Collector of Internal Revenue, First District Illinois, March 2, 1929. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1928

William B. McIlvaine and John P. Wilson, Jr., Trustees of John P. Wilson, Jr., Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income		
Dividends on Stock of Domestic Corporations.	$25,695.05	
Total Income		$25,695.05
Deductions		-0-
Net Income		$25,695.05
Computation of Tax		
Tax on Net Income		$ 558.65
Tax on Capital Gain or Loss (12½% of Schedule D)		(34.69)
Total Tax		$ 523.96

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount	Cost	Net Loss
166-2/3 Adams Royalty Co. com.	1/12/26	4/18/28	$4,119.17	$ 4,583.33	$464.16
133-1/3 National Cash Register Com. "A"	1/19/26	2/1/28	$6,635.33	$ 6,666.67	$ 31.34
					$495.50

132

EXHIBIT 13
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on February 23, 1929. It is stamped received, Collector of Internal Revenue, First District Illinois, March 2, 1929. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1928

William B. McIlvaine and John P. Wilson, Jr., Trustees of Anna W. Dickinson Trust under deed of trust of John P. Wilson dated March 19, 1913.

	Income	
Dividends on Stock of Domestic Corporations.	$25,695.05	
Total Income		$25,695.05
Deductions		-0-
Net Income		$25,695.05

Computation of Tax

Tax on Net Income	$558.65
Tax on Capital Gain or Loss (12½% of Schedule D)	(34.69)
Total Tax	$523.96

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More Than Two Years.

Kind of Property	Date Acquired	Date Sold	Amount	Cost	Net Loss
166 2/3 Adams Royalty Co. com.	1/12/26	4/18/28	$4,119.17	$4,583.33	$464.16
133 1/3 National Cash Register Com. "A"	1/19/26	2/1/28	$6,635.33	$6,666.67	$ 31.34
					$495.50

133

EXHIBIT 14
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on February 23, 1929. It is stamped received, Collector of Internal Revenue, First District Illinois, March 2, 1929. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN FOR CALENDAR YEAR 1928

William B. McIlvaine and John P. Wilson, Jr., Trustees of Martha Wilson Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income

Dividends on Stock of Domestic Corporations	$25,695.05	
Total Income		$25,695.05
Deductions		—0—
Net Income		$25,695.05

Computation of Tax

Tax on Net Income	$ 558.65
Tax on Capital Gain or Loss (12½% of Schedule D)	(34.69)
Total Tax	$ 523.96

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount	Cost	Net Loss
166 2/3 Adams Royalty Co. com.	1/12/26	4/18/28	$ 4,119.17	$ 4,583.33	$ $464.16
133 1/3 National Cash Register Com. "A"	1/19/26	2/1/28	$ 6,635.33	$ 6,666.67	$ 31.34
					$ 495.50

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EXHIBIT 15
(Condensed)

26

Maywood Land Association

1913			
March 19		2,125.00	
			2,125.00

1913	Income & Expense		
May 8	3	150.23	
Sept. 17	3	109.88	
Oct. 21	3	78.81	338.92
1914			
April 14	7	78.57	
Oct. 7	9	183.70	262.27
1915			
June 2	11	150.46	
Sept. 16	13	161.43	311.89
1916			
April 24	19	174.45	
Sept. 25	21	165.05	339.50
1917			
April 10	25	171.42	
Oct. 15	29	160.39	331.81
1918			
May 1	35	162.25	
Oct. 7	39	154.07	316.32

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Maywood Land Association

1919		
Jan. 1 Carried to Page 150	2,125.00	
		2,125.00

Income & Expense		
Dec. 31 To Profit & Loss 260	338.92	
		338.92
1914		
Dec. 31 To Profit & Loss	262.27	
		262.27
1915		
Dec. 31 To Profit & Loss	311.89	
		311.89
1916		
Dec. 31 To Profit & Loss	339.50	
		339.50
1917		
Dec. 31 To Profit & Loss	331.81	
		331.81
1918		
Dec. 31 To Profit & Loss	316.32	
		316.32

EXHIBIT 16
(Condensed)

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Maywood Land Association

1919		
Jan. 1	2,125.00	
1919 Income and Expense		
May 19	167.15	

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Maywood Land Association

1919		
June 30 Balance to New Ledger	2,125.00	
1919 Income and Expense		
June 30 To Profit & Loss	167.15	

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EXHIBIT 17
(Condensed)

ANNA W. DICKINSON
Maywood Land Association

1919		
July 1	An undivided 1/3 of shares of stock as follows: (Old cert. No. 40 12/18/07) 42½ shares Cert. No. 88 9/26/19	2,125

ANNA W. DICKINSON
Income and Expense Account

1919			1919		
Oct. 4	49	25.50	Dec. 31	To Profit and Loss	25.50
1920			1920		
April 15	55	61.19	Dec. 31	To Profit and Loss	61.19

EXHIBIT 18
(Condensed)

MARTHA WILSON
Maywood Land Association

1919		
July 1	An undivided 1/3 of shares of stock as follows: (Old cert. No. 40 12/18/07) 42½ shares Cert. No. 88 9/26/19	2,125

MARTHA WILSON
Income and Expense Account

1919			1919		
Oct. 4	49	25.49	Dec. 31	To Profit and Loss	25.49
1920			1920		
April 15	55	61.19	Dec. 31	To Profit and Loss	61.19

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EXHIBIT 19
(Condensed)

JOHN P. WILSON, Jr.
Maywood Land Association

1919			
July 1	An undivided 1/3 of shares of stock as follows: (Old cert. No. 40 12/18/07) 42½ shares Cert. No. 88 9/26/19		2,125

JOHN P. WILSON, Jr.
Income and Expense Account

1919				1919		
Oct. 4		49	25.50	Dec. 31	To Profit and Loss	25.50
1920				1920		
April 15		55	61.20	Dec. 31	To Profit and Loss	61.20

EXHIBIT A
(Condensed)

JOHN P. WILSON, Jr.
Harris Trust & Savings Bank
a corporation of Illinois

1924	An undivided 1/3 of shares of stock as follows:			1927			
				June 10	Old certificates C341, D128, D290 surrendered		
Apr. 21	50 shares @360						
1926	Cert. No. C341	85	18,000	1929			
Feb. 1	16 shares stock div. Cert. No. D128 2/1/26.			July 11	4/5 sh (4 rts) sold @ $500 sh	210	400
20	1 share (2 3 stock div (1 3 pur @ 400.00						
1927	Cert. No. D290 2/23/26	129	133.33				
June 10	Old certificates surrendered for new certificates bearing endorsement issues D1024 — 1 sh. D1025 — 16 " D1026 — 50 "						

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1929			
Feb. 2	17 Sh #E143-16 sh 2/1/29 #E363-1 sh 3/11/29 (16½ sh-stock div (1/4-pur @ 325	203	325
July 10	16 sh. subs @ $500 sh	210	8,000

EXHIBIT B
(Condensed)

ANNA W. DICKINSON
Harris Trust & Savings Bank
a corporation of Illinois

1924				1927			
	An undivided 1/3 of shares of stock as follows:			June 10	Old certificates C341, D128, D290 surrendered		
Apr. 21	50 shares @ 360 Cert. No. C341	85	18,000	1929			
1926				July 11	4/5 sh (4 rts) sold @ 500 sh	210	400
Feb. 1	16 shares stock div. Cert. No. D128 2/1/26						
20	1 share (2/3 stock div (1/3 pur @ 400.00 Cert. No. D290 2/23/26	129	133.33				
1927							
June 10	Old certificates surrendered for new certificates bearing endorsement issues D1024— 1 sh. D1025—16 " D1026—50 "						
1929							
Feb. 2	17 Sh #E143— 16 sh 2/1/29 #E363— 1 sh 3/11/26 (16¼ sh—stock div (1/4—pur @ 325	203	325				
July 10	16 sh. subs @ $500 sh	210	8,000				

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EXHIBIT C
(Condensed)

MARTHA WILSON
Harris Trust & Savings Bank
a corporation of Illinois

1924			
	An undivided 1/3 of shares of stock as follows:		
April 21	50 shares @ 360 Cert. No. C341	85	18,000
1926			
Feb. 1	16 shares stock div. Cert. No. C128 2/1/26		
20	1 share (2/3 stock div. (1/3 pur @ 400.00 Cert. No. D290 2/23/26	129	133.33
1927			
June 10	Old certificates surrendered for new certificates bearing endorsement issues D1024— 1 sh. D1025—16 " D1026—50 "		
1929			
Feb. 2	17 Sh #E143 — 16 sh 2/1/29 #E363 — 1 sh 3/11/29 (16⅓ by stock div (1/4—pur @ 325	203	325
July 10	16 sh. subs @ 500 sh.	210	8,000
1927			
June 10	Old certificates C341, D128, D290 surrendered		
1929			
July 11	4/5 sh (4 rts) sold @ 500 sh	210	400

139

EXHIBIT D
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 12, 1925. It is stamped received, Collector of Internal Revenue, First District Illinois, March 13, 1925. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1924

Anna W. Dickinson Trust
William B. McIlvaine and John P. Wilson, Jr. as Trustees of Anna W. Dickinson Trust, under deed of trust of John P. Wilson dated March 19, 1913.

Income		
Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$ 6,071.34	
Rents and Royalties	16,039.46	
Profit from Sale of Real Estate, Stocks, Bonds, etc	3,171.00	
Dividends on Stock of Domestic Corporations	38,511.16	
Other Income.		
Broadview Land Association liquidation dividends	41.67	
Total Income		$63,834.63
Deductions		
Taxes Paid	$ 14.60	
Other Deductions Authorized by Law	5,994.32	6,008.92
Net Income		$57,825.71

Beneficiaries' Shares of Income and Credits

	Dividends Attributable to 1924	Balance of Net Income Attributable to 1924
Anna W. Dickinson	$20,000.00	
Elizabeth Preston	1,200.00	
Accumulated and retained by said trustees and added to the principal of said trust	17,311.16	$19,314.55
Totals	$38,511.16	$19,314.55

140 Schedule C—Profit From Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Profit
216-2/3 shares Inter. Harvester Co. com..	1921	$18,338.00	$15,167.00	$3,171.00

Schedule E—Explanation of Deductions in Items 12, 13, and 14.

Wilson, McIlvaine, Hale & Templeton, 140 S. Dearborn St., Chicago, for services in connection with the management and administration of trust estate	$4,000.00
Salaries of employees	1,851.68
Auditing trust books	108.34
Office supplies and incidental expenses	34.30

EXHIBIT E
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 12, 1925. It is stamped received, Collector of Internal Revenue, First District Illinois, March 13, 1925. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1924

Martha Wilson Trust
William B. McIlvaine and John P. Wilson, Jr., as Trustees of Martha Wilson Trust, under deed of trust of John P. Wilson dated March 19, 1913.

Income		
Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$ 6,071.34	
Rents and Royalties	16,039.46	
Profit from Sale of Real Estate, Stocks, Bonds, etc	3,171.00	
Dividends on Stock of Domestic Corporations	38,511.16	
Other Income.		
Broadview Land Association liquidation dividends	41.67	
Total Income		$63,834.63

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Deductions

Taxes Paid	$ 14.60	
Other Deductions Authorized by Law	5,994.32	$ 6,008.92
Net Income		$57,825.71

Beneficiaries' Shares of Income and Credits

	Dividends Attributable to 1924	Balance of Net Income Attributable to 1924
Anna W. Dickinson	$10,000.00	
John P. Wilson, Jr	10,000.00	
Elizabeth Preston	1,200.00	
Accumulated and retained by said trustees and added to the principal of said trust	17,311.16	$19,314.55
	$38,511.16	$19,314.55

Schedule C—Profit from Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Profit
216-2/3 shares Inter. Harvester Co. com.	1921	$18,338.00	$15,167.00	$ 3,171.00

Schedule E—Explanation of Deductions Claimed under Other Deductions Authorized by Law

Wilson, McIlvaine, Hale & Templeton, 140 S. Dearborn St., Chicago for services in connection with the management and administration of trust estate	$ 4,000.00
Salaries of employees	1,851.68
Auditing trust books	108.34
Office supplies and incidental expenses	34.30

EXHIBIT F
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 12, 1925. It is stamped received, Collector of Internal Revenue, First District Illinois, March 13, 1925. Omitting the affidavit, the material portions of this document are as follows:

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Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1924

John P. Wilson, Jr. Trust
William B. McIlvaine and John P. Wilson, Jr. as trustees of John P. Wilson, Jr. Trust, under deed of trust of John P. Wilson dated March 19, 1913.

Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$ 6,071.34	
Rents and Royalties	16,039.46	
Profit from Sale of Real Estate, Stocks, Bonds, etc	3,171.00	
Dividends on Stock of Domestic Corporations.	38,511.16	
Other Income.		
Broadview Land Association liquidation dividends	41.67	
Total Income		$63,834.63

Deductions

Taxes Paid	$ 14.60	
Other Deductions Authorized by Law	5,994.32	6,008.92
Net Income		$57,825.71

Beneficiaries' Shares of Income and Credits

	Dividends Attributable to 1924	Balance of Net Income Attributable to 1924
John P. Wilson, Jr.	$20,000.00	
Elizabeth Preston	1,200.00	
Accumulated and retained by said trustees and added to the principal of said trust	17,311.16	$19,314.55
	$138,511.16	$19,314.55

143 Schedule C—Profit from Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Profit
216-2/3 shares Inter. Harvester Co. com	1921	$18,338.00	$15,167.00	$ 3,171.00

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn St., Chicago, for services in connection with the management and administration of trust estate	$ 4,000.00
Salaries of employees	1,851.68
Auditing trust books	108.34
Office supplies and incidental expenses	34.30

EXHIBIT G
(Condensed)

This document was subscribed and sworn to by William B. McIlvaine on March 5, 1926. It is stamped received, Collector of Internal Revenue, First District Illinois, March 6, 1926. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1925

Anna W. Dickinson Trust
William B. McIlvaine and John P. Wilson, Jr. as Trustees of Anna W. Dickinson Trust, under deed of trust of John P. Wilson, dated March 19, 1913.

Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$ 4,614.57
Rents and Royalties	3,543.24
Profit from Sale of Real Estate, Stocks, Bonds, etc	107.63
Dividends on Stock of Domestic Corporations	41,744.59

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Other Income.			
Bagdad Investment Co. liquidation dividends	$ 3,666.66		
Broadview Land Association liquidation dividends	166.67	$ 3,833.33	
Total Income			$53,843.36
Deductions			
Taxes Paid		$ 37.22	
Other Deductions Authorized by Law		6,214.97	6,252.19
Net Income			$47,591.17

Beneficiaries' Shares of Income and Credits

	Dividends	Balance of Net Income	Capital Net Gain
Anna W. Dickinson	$17,840.56		
Elizabeth Preston	1,200.00		
Accumulated and retained by said trustees and added to the principal of said trust	22,704.03	$ 5,846.58	$11,315.06
Totals	$41,744.59	$ 5,846.58	$11,315.06

Schedule C—Profit from Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Profit
Stocks:				
11-2/3 shs. Insurance Exchange Bldg. Corp	1/28/16	$ 1,283.33	$ 1,166.67	$ 116.66
2/3 Illinois Bell Telephone Co. right	7/29/25	1.33		1.33
1-1/3 Commonwealth Edison Co. rights	4/1/25	5.50	4.30	1.20
Bonds:				
10,000 U. S. A. 3rd Liberty	1/19/25	10,131.25	10,141.62	(9.37)
7,000 U. S. A. 3rd Liberty	1/19/25	7,096.25	7,098.44	(2.19)

145 Schedule D—Capital Net Gain or Loss From Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Cost	Net Gain
Real Estate S. E. cor. State & Congress Sts (1/3 interest)	1/2 12/20/21 1/2 12/31/21	1/17/25	$61,315.06	$50,000.00	$11,315.06

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn St., Chicago for services in connection with the management and administration of trust estate	$4,000.00
Salaries of employees	1,971.67
Auditing trust books	133.33
Office supplies and incidental expenses	109.97

EXHIBIT H
(Condensed)

This document was subscribed and sworn to by William B. McIlvaine on March 5, 1926. It is stamped received, Collector of Internal Revenue, First District Illinois, March 6, 1926. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1925

John P. Wilson, Jr. Trust
William B. McIlvaine and John P. Wilson, Jr. as trustees of John P. Wilson, Jr. Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income	
Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$4,614.52
Rents and Royalties	3,543.24

146 Profit from Sale of Real Estate, Stocks, Bonds, etc.		$ 107.63	
Dividends on Stock of Domestic Corporations		41,744.59	
Other Income.			
Bagdad Investment Co. Liquidation dividends	$3,666.67		
Broadview Land Association Liquidation dividends	166.67	3,833.34	
Total Income			$53,843.38
Deductions			
Taxes Paid		$ 37.22	
Other Deductions Authorized by Law		6,214.98	6,252.20
Net Income			$47,591.18

Beneficiaries' Shares of Income and Credits

	Dividends	Balance of Net Income	Capital Net Gain
John P. Wilson, Jr	$17,840.57		
Elizabeth Preston	1,200.00		
Accumulated and retained by said trustees and added to the principal of said trust	22,704.02	$5,846.59	$11,315.06
Totals	$41,744.59	$5,846.59	$11,315.06

Schedule C—Profit from Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Profit
Stocks:				
11-2/3 shs. Insurance Exchange Bldg. Corp	1/28/16	$ 1,283.33	$ 1,166.67	$ 116.66
2/3 Illinois Bell Telephone Co. right	7/29/25	1.33	.....	1.33
1-1/3 Commonwealth Edison Co. rights	4/1/25	5.50	4.30	1.20
Bonds:				
10,000 U. S. A. 3rd Liberty	1/19/25	10,131.25	10,141.62	(9.37)
7,000 U. S. A. 3rd Liberty	1/19/25	7,096.25	7,098.44	(2.19)

147 Schedule D—Capital Net Gain or Loss from Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Cost	Net Gain
Real Estate S. E. cor. State & Congress Streets 1/2	12/20/21				
(1/3 interest)	1/2 12/31/21	1/17/25	$61,315.06	$50,000.00	$11,315.06

Schedule E—Explanation of Deductions

Wilson, McIlvaine Hale & Templeton, 140 So. Dearborn St., Chicago, for services in connection with the management and administration of trust estate	$4,000.00
Salaries of employees	1,971.67
Auditing trust books	133.34
Office supplies and incidental expenses	109.97

EXHIBIT I
(Condensed)

The material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1925

Martha Wilson Trust
William B. McIlvaine and John P. Wilson, Jr. as Trustees of Martha Wilson Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income	
Interest on Bank Deposits, Notes Mortgages, and Corporation Bonds	$ 4,614.57
Rents and Royalties	3,543.24
Profit from Sale of Real Estate Stocks, Bonds, etc	107.63

148

Dividends on Stock of Domestic Corporations		$41,744.59	
Other Income.			
Bagdad Investment Co. Liquidation dividends	$ 3,666.67		
Broadview Land Association Liquidation dividends	166.66	3,833.33	
Total Income			$53,843.36

Deductions

Taxes Paid		$ 37.22	
Other Deductions Authorized by Law		6,214.97	6,252.19
Net Income			$47,591.17

Beneficiaries' Shares of Income and Credits

	Dividends	Balance of Net Income	Capital Net Gain
Anna W. Dickinson	$ 8,920.28		
John P. Wilson, Jr	8,920.28		
Elizabeth Preston	1,200.00		
Accumulated and retained by said trustees and added to the principal of said trust	22,704.03	$ 5,846.58	$11,315.06
Totals	$41,744.59	$ 5,846.58	$11,315.06

Schedule C—Profit From Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Profit
Stocks:				
11-2/3 shs. Insurance Exchange Bldg. Corp.	1/28/16	$ 1,283.33	$ 1,166.67	$ 116.66
2/3 Illinois Bell Telephone right	7/29/25	1.33		1.33
1-1/3 Commonwealth Edison Co. rights	4/1/25	5.50	4.30	1.20
Bonds:				
10,000 U. S. A. 3rd Liberty	1/19/25	10,131.25	10,141.62	(9.37)
7,000 U. S. A. 3rd Liberty	1/19/25	7,096.25	7,098.44	(2.19)

149 Schedule D—Capital Net Gain or Loss from Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Cost	Net Gain
Real Estate S.E.Corner State & Congress Sts. (1/3 interest)	1/2 12/20/21 1/2 12/31/21	1/17/25 1/17/25	$61,315.06	$50,000.00	$11,315.06

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn St., Chicago, for services in connection with the management and administration of trust estate	$ 4,000.00
Salaries of employees	1,971.66
Auditing trust books	133.33
Office supplies and incidental expenses	109.98

EXHIBIT J
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on February 15, 1927. It is stamped received, Collector of Internal Revenue, First District Illinois, March 15, 1927. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1926

John P. Wilson, Jr. Trust
William B. McIlvaine and John P. Wilson, Jr. as Trustees of John P. Wilson, Jr. Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$ 2,766.70
Rents and Royalties	1,411.35

150

Profit from Sale of Real Estate, Stocks, Bonds, etc.	$17,765.07	
Dividends on Stock of Domestic Corporations	38,472.79	
Other Income.		
Broadview Land Association, liquidation dividends	83.33	
Total Income		$60,499.24
Deductions		
Taxes Paid	$ 12.23	
Other Deductions Authorized by Law	6,417.95	
Total Deductions		6,430.18
Net Income		$54,069.06

Beneficiaries' Shares of Income and Credits

	Dividends	Balance of Net Income
John P. Wilson	$15,659.42	
Elizabeth Preston	1,200.00	
William B. McIlvaine and John P. Wilson, Jr., trustees as aforesaid, held and added to principal under the terms and provisions of said trust	19,361.24	$17,848.40
Totals	$36,220.66	$17,848.40

Schedule C—Profit From Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Subsequent Improvements	Net Profit
Real Estate:					
1/3 Interest 343–45 So. Clark St.	12/21/20	$49,754.23	$33,333.33	$ 210.63	$16,210.27
Building very old—no depreciation ever taken					
Stocks:					
133-1/3 Com. Edison	1923 to 1925	19,030.67	17,130.90		1,899.77

151 33-1/3 Chicago J. S. L. Bank....	1924	$ 4,750.00	$ 4,833.33	$(83.33)
45 Butler Bros.....	1920	1,297.36	1,417.50	(120.14)
Bonds:				
333.33 U. S. A. 4th Liberty...	1923	341.25	329.93	11.32
46,333.33 U. S. A. 3rd Liberty	1925	46,886.77	47,039.59	(152.82)
			Total Gain.....	$18,121.36
			Total Loss.....	356.29
			Net Gain.....	$17,765.07

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn St., Chicago, for services in connection with management and administration of trust estate.....	$ 4,000.00
Salaries of employees.....	1,898.76
Auditing trust books.....	133.33
Office supplies and incidental expenses.....	385.86

EXHIBIT K
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on February 15, 1927. It is stamped received, Collector of Internal Revenue, First District Illinois, March 15, 1927. Omitting the affidavit the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1926

Anna W. Dickinson Trust
William B. McIlvaine and John P. Wilson, Jr. as trustees of Anna W. Dickinson Trust, under deed of trust of John P. Wilson dated March 19, 1913.

152 Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$2,766.70	
Rents and Royalties	1,411.37	
Profits from Sale of Real Estate, Stocks, Bonds, etc	17,765.07	
Dividends on Stock of Domestic Corporations.	38,472.80	
Other Income.		
Broadview Land Association, liquidation dividends	83.33	
Total Income		$60,499.27

Deductions

Taxes Paid	$ 12.23	
Other Deductions Authorized by Law	6,417.96	
Total Deductions		6,430.19
Net Income		$54,069.08

Beneficiaries' Shares of Income and Credits

	Dividends	Balance of Net Income
Anna W. Dickinson	$15,659.42	
Elizabeth Preston	1,200.00	
William B. McIlvaine and John P. Wilson, Jr., trustees as aforesaid, held and added to principal under the terms and provisions of said trust	19,361.26	$17,848.40
Totals	$36,220.68	$17,848.40

153 Schedule C—Profit From Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount. Received	Cost	Subsequent Improvements	Net Profit
Real Estate					
1/3 Interest 343-5 So. Clark St....	12/21/20	$49,754.23	$33,333.33	$ 210.63	$16,210.27
Building very old—no depreciation ever taken					
Stocks	1923 to				
133-1/3 Com. Edison....	1925	19,030.67	17,130.90		1,899.77
33-1/3 Chicago J. S. L. B.	1924	4,750.00	4,833.33		(83.33
45 Butler Brothers..	1920	1,297.36	1,417.50		(120.14)
Bonds					
333.33 U. S. A. 4th Liberty	1923	341.25	329.93		11.32
46,333.33 U. S. A. 3rd Liberty	1925	46,886.77	47,039.59		(152.82)

Total Gain.....	$18,121.36
Total Loss.....	356.29
Net Gain.....	$17,765.07

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn St., Chicago, for services in connection with management and administration of trust estate.....	$4,000.00
Salaries of employees.....	1,898.77
Auditing trust books.....	133.33
Office supplies and incidental expenses.....	385.86

EXHIBIT L
(Condensed)

The material portions of this document are as follows:

154 Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1926

Martha Wilson Trust
William B. McIlvaine and John P. Wilson, Jr., as Trustees of Martha Wilson Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income

Interest on Bank Deposits, Notes, Mortgages, and Corporation Bonds	$ 2,766.69	
Rents and Royalties	1,411.39	
Profit from Sale of Real Estate, Stocks, Bonds, etc	17,765.07	
Dividends on Stock of Domestic Corporations	38,472.79	
Other Income.		
Broadview Land Association, liquidating Dividends	83.34	
Total Income		$60,499.28

Deductions

Taxes Paid	$ 12.23	
Other Deductions Authorized by Law	6,417.95	
Total Deductions		6,430.18
Net Income		$54,069.10

Beneficiaries' Shares of Income and Credits

	Dividends	Balance of Net Income
Anna W. Dickinson	$ 7,829.72	
John P. Wilson	7,829.71	
Elizabeth Preston	1,200.00	
William B. McIlvaine and John P. Wilson, Jr., trustees as aforesaid, held and added to principal under the terms and provisions of said trust	19,361.26	$17,848.41
Totals	$36,220.69	$17,848.41

155 Schedule C—Profit From Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Subsequent Improvements	Net Profit
Real Estate:					
1/3 interest 343–345 So. Clark St.	12/21/20	$49,754.23	$33,333.33	$ 210.63	$16,210.27
Building very old—no depreciation ever taken					
Stocks:					
133-1/3 sh. Com. Edison Co.	1923 to 1925	19,030.67	17,130.90		1,899.77
33-1/3 shares Chicago J. S. L. B.	1924	4,750.00	4,833.33		(83.33)
45 sh. Butler Bros.	1920	1,297.36	1,417.50		(120.14)
Bonds:					
333.33 U.S.A. 4th Liberty	1923	341.25	329.93		11.32
46,333.33 U. S. A. 3rd Liberty	1925	46,886.77	47,039.59		(152.82)
		Total Gain	$18,121.36		
		Total Loss	356.29		
		Net Gain	$17,765.07		

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn St., Chicago, for services in connection with management and administration of trust estate	$ 4,000.00
Salaries of employees	1,898.76
Auditing trust books	133.34
Office supplies and incidental expenses	385.85

156

EXHIBIT M
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 9, 1928. It is stamped received, Collector of Internal Revenue, First District Illinois, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1927

Martha Wilson Trust.
William B. McIlvaine and John P. Wilson, Jr. Trustees of Martha Wilson Trust, under deed of trust of John P. Wilson, dated March 19, 1913.

Income		
Interest on Bank Deposits, Notes and Corporation Bonds, etc	$ 2,693.65	
Rents and Royalties	(141.10)	
Profit from Sale of Real Estate, Stocks, Bonds, etc	3,756.22	
Dividends on Stock of Domestic Corporations.	43,906.68	
Total Income		$50,215.45
Deductions		
Interest Paid	$ 31.97	
Taxes Paid	31.36	
Other Deductions Authorized by Law	8,182.50	
Total Deductions		8,245.83
Net Income		$41,969.62

Beneficiaries' Shares of Income and Credits

	Dividends
Anna W. Dickinson	$12,952.73
John P. Wilson	12,952.73
Elizabeth Preston	1,200.00
William B. McIlvaine and John P. Wilson, Jr., trustees as aforesaid held and added to principal under the terms and provisions of said trust	14,864.16
Total	$41,969.62

Schedule C—Profit from Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Profit
Stocks:				
100 White Sewing Machine Corp. com	2/ 2/27	$ 4,093.50	Bonus	$ 4,093.50
216-2/3 No. Amer. Car Corp	7/22/27	6,940.25	$ 6,283.33	656.92
284 Elec. Bond & Share Sec. Corp	7/27/27	20,732.00	21,726.20	(994.20)

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Depreciation Allowable Since Acquisition	Cost	Subsequent Improvements & Capital Deductions	Net Gain or Loss
Real Estate:							
1347-53 So. Michigan	12/21/20	7/26/27	$60,000.00	$ 7,236.65	$80,000.00	$ 11,051.01	$(23,814.36)
Stocks:							
166-2/3 Bagdad Investment Co	6/26/17	10/8/27	125.00	Liquidating dividend			125.00
8-1/3 Broadview Land Association	3/19/13	10/8/27	162.50	Liquidating dividend			162.50

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn Street, Chicago, for services in connection with management and administration of trust estate	$ 6,000.00
Salaries of employees	2,025.00
Auditing trust books	133.33
Office supplies and incidental expenses	24.17

158

EXHIBIT N
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 9, 1928. It is stamped received, Collector of Internal Revenue, First District Illinois, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1927

John P. Wilson, Jr. Trust.
William B. McIlvaine and John P. Wilson, Jr. as Trustees of John P. Wilson, Jr. Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income

Interest on Bank Deposits, Notes, and Corporation Bonds, etc	$ 2,693.66	
Rents and Royalties	(141.10)	
Profit from Sale of Real Estate, Stocks, Bonds, etc	3,756.22	
Dividends on Stock of Domestic Corporations.	43,906.68	
Total Income		$50,215.46

Deductions

Interest Paid	$ 31.98	
Taxes Paid	31.36	
Other Deductions Authorized by Law	8,182.51	
Total Deductions		8,245.85
Net Income		$41,969.61

Beneficiaries' Shares of Income and Credits

	Dividends
John P. Wilson	$25,905.46
Elizabeth Preston	1,200.00
William B. McIlvaine and John P. Wilson, Jr., trustees as aforesaid, held and added to principal under the terms and provisions of said trust	14,864.15
Total	$41,969.61

159 Schedule C—Profit from Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Profit
Stocks:				
100 White Sewing Machine Com	2/ 2/27	$ 4,093.50	Bonus	$ 4,093.50
216-2/3 No. Amer. Car Corp	7/22/27	6,940.25	$ 6,283.33	656.92
284 Elec. Bond & Share Sec. Corp	7/27/27	20,732.00	21,726.20	(994.20)

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Depreciation Allowable Since Acquisition	Cost	Subsequent Improvements & Capital Deductions	Net Gain or Loss
Real Estate:							
1347 So. Michigan 1/3 interest	12/21/20	7/26/27	$60,000.00	$ 7,236.65	$80,000.00	$ 11,051.01	$(23,814.36)
Stocks:							
166-2/3 Bagdad Investment Co	6/26/17	10/8/27	125.00	Liquidating dividend			125.00
8-1/3 Broadview Land Association	3/19/13	10/8/27	162.50	Liquidating dividend			162.50

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn Street, Chicago, for services in connection with management and administration of trust estate	$ 6,000.00
Salaries of employees	2,025.00
Auditing trust books	133.34
Office supplies and incidental expenses	24.17

160

EXHIBIT O
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 9, 1928. It is stamped received, Collector of Internal Revenue, First District Illinois, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1927

Anna W. Dickinson Trust.
William B. McIlvaine and John P. Wilson, Jr. as Trustees of Anna W. Dickinson Trust under deed of trust of John P. Wilson, dated March 19, 1913.

Income		
Interest on Bank Deposits, Notes, and Corporation Bonds, etc	$ 2,693.66	
Rents and Royalties	(141.10)	
Profit from Sale of Real Estate, Stocks, Bonds, etc	3,756.22	
Dividends on Stock of Domestic Corporations	43,906.67	
Total Income		$50,215.45
Deductions		
Interest Paid	$ 31.97	
Taxes Paid	31.36	
Other Deductions Authorized by Law	8,182.50	
Total Deductions		8,245.83
Net Income		$41,969.62

Beneficiaries' Shares of Income and Credits	Dividends
Anna W. Dickinson	$25,905.47
Elizabeth Preston	1,200.00
William B. McIlvaine and John P. Wilson, Jr. trustees as aforesaid, held and added to principal under the terms and provisions of said trust	14,864.15
Total	$41,969.62

161 Schedule C—Profit from Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Profit
Stocks:				
100 White Sewing Machine Com	2/ 2/27	$ 4,093.50	Bonus	$ 4,093.50
216-2/3 No. Amer. Car Corp	7/22/27	6,940.25	$ 6,283.33	656.92
284 Elec. Bond & Share Sec. Corp	7/27/27	20,732.00	21,726.20	(994.20)

Schedule D—Capital Net Gain or Loss from Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Depreciation Allowable Since Acquisition	Cost	Subsequent Improvements & Capital Deductions	Net Gain or Loss
Real Estate:							
1347-53 So. Michigan 1/3 interest	12/21/20	7/26/27	$60,000.00	$ 7,236.65	$80,000.00	$ 11,051.01	($23,814.36)
Stocks:							
166-2/3 Bagdad Investment Co	6/26/17	10/8/27	125.00	Liquidating dividend			125.00
8-1/3 Broadview Land Association	3/19/13	10/8/27	162.50	Liquidating dividend			162.50

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn Street, Chicago, for services in connection with management and administration of trust estate	$ 6,000.00
Salaries of employees	2,025.00
Auditing trust books	133.33
Office supplies and incidental expenses	24.17

162

EXHIBIT P
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 9, 1928. It is stamped received, Collector of Internal Revenue, First District Illinois, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN
For Calendar Year 1927

William B. McIlvaine and John P. Wilson, Jr. Trustees of Anna W. Dickinson Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income

Dividends on Stock of Domestic Corporations	$14,864.15	
Total Income		$14,864.15
Deductions		—0—
Net Income		$14,864.15

Computation of Tax

Tax on Net Income	$ 57.28
Adjustment for Capital Gain or Loss (12½%)	(2,940.85)
Total Tax	None

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Depreciation Allowable Since Acquisition	Cost	Subsequent Improvements & Capital Deductions	Net Gain or Loss
Real Estate:							
1347-53 So. Michigan 1/3 interest	12/21/20	7/26/27	$60,000.00	$ 7,236.65	$80,000.00	$11,051.01	($23,814.36)
Stocks:							
166-2/3 Bagdad Investment Co.	6/26/17	10/8/27	125.00	Liquidating dividend			125.00
8-1/3 Broadview Land Association	3/19/13	10/8/27	162.50	Liquidating dividend			162.50

163

EXHIBIT Q
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 9, 1928. It is stamped received, Collector of Internal Revenue, First District Illinois, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN
For Calendar Year 1927

William B. McIlvaine and John P. Wilson, Jr. trustees of John P. Wilson, Jr. trust under deed of trust of John P. Wilson dated March 19, 1913.

Income

Dividends on stock of domestic corporations	$14,864.15	
Total Income		$14,864.15
Deductions		—0—
Net Income		$14,864.15

Computation of Tax

Tax on Net Income	$ 57.28
Adjustment for Capital Gain or Loss (12½%)	(2,940.85)
Total Tax	None

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Depreciation Allowable Since Acquisition	Cost	Subsequent Improvements & Capital Deductions	Net Gain or Loss
Real Estate:							
1347-53 So. Michigan 1/3 interest	12/21/20	7/26/27	$60,000.00	$ 7,236.65	$80,000.00	$11,051.01	($23,814.36)
Stocks:							
166-2/3 Bagdad Investment Co.	6/26/17	10/8/27	125.00	Liquidating dividend			125.00
8-1/3 Broadview Land Association	3/19/13	10/8/27	162.50	Liquidating dividend			162.50

164

EXHIBIT R
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on March 9, 1928. It is stamped received, Collector of Internal Revenue, First District Illinois, March 15, 1928. Omitting the affidavit, the material portions of this document are as follows:

Form 1040
U. S. Internal Revenue

INDIVIDUAL INCOME TAX RETURN
For Calendar Year 1927

William B. McIlvaine and John P. Wilson, Jr. Trustees of Martha Wilson Trust under deed of trust of John P. Wilson, dated March 19, 1913.

Income		
Dividends on Stock of Domestic Corporations	$14,864.16	
Total Income		$14,864.16
Deductions		—0—
Net Income		$14,864.16
Computation of Tax		
Tax on Net Income		$ 57.28
Adjustment for Capital Gain or Loss (12½%)		(2,940.85)
Total Tax		None

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Depreciation Allowable Since Acquisition	Cost	Subsequent Improvements & Capital Deductions	Net Gain or Loss
Real Estate:							
1347-53 So. Michigan 1/3 interest	12/21/20	7/26/27	$60,000.00	$ 7,236.65	$80,000.00	$11,051.01	($23,814.36)
Stocks:							
166-2/3 Bagdad Investment Co.	6/26/17	10/8/27	125.00	Liquidating dividend			125.00
8-1/3 Broadview Land Association	3/19/13	10/8/27	162.50	Liquidating dividend			162.50

165 EXHIBIT S
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on February 23, 1929. It is stamped received, Collector of Internal Revenue, First District Illinois, March 2, 1929. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1928

Anna W. Dickinson Trust
William B. McIlvaine and John P. Wilson, Jr. as Trustees of Anna W. Dickinson Trust under deed of trust of John P. Wilson dated March 19, 1913.

	Income	
Interest on Bank Deposits, Notes, and Corporation Bonds, etc.	$ 1,917.81	
Rents and Royalties	6,536.85	
Profit from Sale of Real Estate, Stocks, Bonds, etc.	(482.67)	
Dividends on Stock of Domestic Corporations.	45,932.39	
Total Income		$53,904.38
Deductions		
Interest Paid	$ 1,104.83	
Taxes Paid	26.67	
Other Deductions Authorized by Law	7,707.83	
Total Deductions		8,839.33
Net Income		$45,065.05

Beneficiaries' Shares of Income and Credits

	Dividends	Capital Net Loss
Anna W. Dickinson	$ 9,085.00	
John P. Wilson	9,085.00	
Elizabeth Preston	1,200.00	
William B. McIlvaine and John P. Wilson, Jr., Trustees as aforesaid held and added to principal under the terms and provisions of said trust	25,695.05	$ 495.50
Totals	$45,065.05	

166 Schedule C—Profit from Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Loss
66-2/3 Engineers Public Service Co. $5. Pfd.	4/16/28	$ 6,184.00	$ 6,666.67	$ 482.67

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Cost	Net Loss
166-2/3 Adams Royalty Co. com.	1/12/26	4/18/28	$4,119.17	$4,583.33	$ 464.16
133-1/3 National Cash Register Common "A"	1/19/26	2/1/28	6,635.33	6,666.67	31.34

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn Street, Chicago, for services in connection with management and administration of trust estate	$5,333.33
Salaries of employees	2,011.66
Custodian fees $174.59; Auditing books $133.33	307.92
Office supplies and incidental expenses	54.92
	$7,707.83

167 EXHIBIT T
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on February 23, 1929. It is stamped received, Collector of Internal Revenue, First District of Illinois, March 2, 1929. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1928

John P. Wilson, Jr. Trust
William B. McIlvaine and John P. Wilson, Jr. as Trustees of John P. Wilson, Jr. Trust under deed of trust of John P. Wilson dated March 19, 1913.

Income		
Interest on Bank Deposits, Notes, and Corporation Bonds, etc	$ 1,917.81	
Rents and Royalties	6,536.85	
Profit from Sale of Real Estate, Stocks, Bonds, etc	(482.67)	
Dividends on Stock of Domestic Corporations.	45,932.39	
Total Income		$53,904.38
Deductions		
Interest Paid	$ 1,104.83	
Taxes Paid	26.67	
Other Deductions Authorized by Law	7,707.83	
Total Deductions		8,839.33
Net Income		$45,065.05

Beneficiaries' Shares of Income and Credits

	Dividends	Capital Net Loss
Anna W. Dickinson	$ 9,085.00	
John P. Wilson	9,085.00	
Elizabeth Preston	1,200.00	
William B. McIlvaine and John P. Wilson, Jr. Trustees as aforesaid held and added to principal under the terms and provisions of said trust	25,695.05	$ 495.50
Total	$45,065.05	

168 Schedule C—Profit From Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Loss
66-2/3 Engineers Public Service Co. $5. Pfd.....	4/16/28	$6,184.00	$6,666.67	$ 482.67

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Cost	Net Loss
166-2/3 Adams Royalty Co. com.....	1/12/26	4/18/28	$4,119.17	$4,583.33	$ 464.16
133-1/3 National Cash Register Common "A"	1/19/26	2/1/28	6,635.33	6,666.67	31.34

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn Street, Chicago, for services in connection with management and administration of trust estate.....	$ 5,333.33
Salaries of employees.....	2,011.66
Custodian fees $174.59; Auditing books $133.33.....	307.92
Office supplies and incidental expenses.....	54.92
Total.....	$ 7,707.83

169 EXHIBIT U
(Condensed)

This document was subscribed and sworn to by John P. Wilson, Jr., on February 23, 1929. It is stamped received, Collector of Internal Revenue, First District of Illinois, March 2, 1929. Omitting the affidavit, the material portions of this document are as follows:

Form 1041
U. S. Internal Revenue

FIDUCIARY RETURN OF INCOME
For Calendar Year 1928

Martha Wilson Trust
William B. McIlvaine and John P. Wilson, Jr. as trustees of Martha Wilson Trust, under deed of trust of John P. Wilson dated March 19, 1913.

Income		
Interest on Bank Deposits, Notes, and Corporation Bonds, etc	$ 1,917.81	
Rents and Royalties	6,536.85	
Profit from Sale of Real Estate, Stocks, Bonds, etc	(482.67)	
Dividends on Stock of Domestic Corporations.	45,932.39	
Total Income		$53,904.38
Deductions		
Interest Paid	$ 1,104.83	
Taxes Paid	26.67	
Other Deductions Authorized by Law	7,707.83	
Total Deductions		8,839.33
Net Income		$45,065.05

Beneficiaries' Shares of Income and Credits

	Dividends	Capital Net Loss
Anna W. Dickinson	$ 9,085.00	
John P. Wilson	9,085.00	
Elizabeth Preston	1,200.00	
William B. McIlvaine and John P. Wilson, Jr., Trustees as aforesaid held and added to principal under the terms and provisions of said trust	25,695.05	$ 495.50
Totals	$45,065.05	

170 Schedule C—Profit From Sale of Real Estate, Stocks, Bonds, Etc.

Kind of Property	Date Acquired	Amount Received	Cost	Net Loss
66-2/3 Engineers Public Service Co. $5. Pfd....	4/16/28	$6,184.00	$6,666.67	$ 482.67

Schedule D—Capital Net Gain or Loss From Sale of Assets Held More Than Two Years

Kind of Property	Date Acquired	Date Sold	Amount Received	Cost	Net Loss
166-2/3 Adams Royalty Co. Com.....	1/12/26	4/18/28	$4,119.17	$4,583.33	$ 464.16
133-1/3 National Cash Register Common "A"	1/19/26	2/1/28	6,635.33	6,666.67	31.34

Schedule E—Explanation of Deductions

Wilson, McIlvaine, Hale & Templeton, 140 So. Dearborn Street, Chicago, for services in connection with management and administration of trust estate.....	$ 5,333.33
Salaries of employees.....	2,011.66
Custodian fees $174.59; Auditing books $133.33.....	307.92
Office supplies and incidental expenses.....	54.92
	$ 7,707.83

171 The foregoing evidence is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned, Robert H. Jackson, Assistant General Counsel for the Bureau of Internal Revenue, as attorney for the Commissioner of Internal Revenue.

(Signed) ROBERT H. JACKSON,
Robert H. Jackson,
Assistant General Counsel for the Bureau of Internal Revenue.

Certificate to Statement of Evidence.

The foregoing is all of the material evidence adduced at the hearing before the Board of Tax Appeals, and the same is approved by the undersigned as attorney for the respondent on review.

.....
Attorney for Respondent on Review.

Approved and ordered filed August 2, 1934.
(Sgd.) ERNEST H. VAN FOSSON,
Member United States Board of Tax Appeals.

77 UNITED STATES BOARD OF TAX APPEALS. Filed Nov. 7, 1933.

William B. McIlvaine and John P. Wilson, Jr., Trustees under the Deed of Trust of John P. Wilson, Petitioners, *vs.* Commissioner of Internal Revenue, Respondent.

Docket Nos. 52931, 57226. Promulgated November 7, 1933.

An instrument, as amended, construed and held to create three separate and distinct trusts.

Clay Judson, Esq., and John P. Wilson, Esq., for the petitioners.

F. R. Shearer, Esq., and E. L. Updike, Esq., for the respondent.

In these proceedings, which were consolidated for hearing and report, the deficiencies relate to income taxes for 1924, 1925, 1926 and 1928 in the respective amounts of $20,949.69, $13,758.96, $11,045.29 and $7,149.52. By agreement the parties have limited the issues raised by the pleadings to the single question of whether the portion of the income derived from property placed in trust under a certain instrument, as amended, which was not distributed or distributable to the beneficiaries thereof, is subject to income tax on the basis of one or three trusts.

Findings of Fact.

On March 19, 1913, John P. Wilson of Chicago, Illinois, by a written instrument transferred certain described stocks, bonds, and notes to the petitioners, in trust, for the equal benefit of his three children, Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson. Article II of the instrument gave the trustees power to collect income earned by the property held in trust, sell and assign the assets subject to certain prescribed limitations, and vote the stock. Article III provided for adding income derived from the trust estate to the corpus for a period of 15 years, unless shortened by certain parties; that upon the termination of the period of accumulation of income, one third of the income should be paid to each beneficiary for life; that after the death of any beneficiary his or her one third should be distributed in accordance with his or her will, and in case of default, to surviving

issue of such deceased beneficiary, and in default of such issue, to the surviving beneficiaries in equal shares. The first paragraph of Article IV reads as follows:

The trust hereby created shall in any and the latest event terminate at the death of the survivor of Martha Wilson, John P. Wilson, Jr. and Anna W. Dickinson, and said trust may be terminated in whole or in part at any time by an instrument in writing signed by the said three children of the first party, or the survivors or survivor of them, upon the delivery of such written instrument to the said Trustees, provided, however, that during the life of said first party such written instrument must have the written approval of said first party [grantor].

The same article further provided that upon the termination of the trust one third of the corpus should be distributed to each beneficiary, and if any of the beneficiaries should not be then living, his or her share should be paid out in accordance with the terms of his or her will, and in default of such disposition, to his or her surviving issue, per stirpes, and in default of such issue, to the then surviving issue of the grantor, per stirpes. Article V of the trust deed contains the acceptance of the trust by the trustees while acting in their fiduciary capacity, payment of expenses of the trust, compensation to the trustees, and the appointment of succesors to the trustees. The same article also contains a provision reading as follows:

Any of the provisions of this indenture may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries hereinbefore named, or the survivors or survivor of them which shall be delivered to the said Trustees or one of them, provided, however, that such instrument must be approved in writing by the said party of the first part, if made during his life, and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form. * * *

On June 19, 1919, the beneficiaries of the trust, with the written approval of the grantor, executed an instrument modifying the trust deed in certain respects. Material provisions of the amendment read as follows:

First. The trust estate now held under said Trust Deed shall be divided into three separate and equal parts or shares (to which may be assigned undivided interests in the whole or any part of the said trust estate), which parts or shares shall severally be designated by our respective names, and each of us and our respective legal representatives shall have the same rights, interests and power in and over one of said three equal parts or shares and the income thereof which is given to us respectively by said Indenture over one third (⅓) of said trust estate and the income thereof, except as may be otherwise specifically provided herein.

78 Second. Distribution of Income.

Any and all additions to the trust estate held under said Indenture (other than additions from the accumulation of income from the separate trust estates held under said Indenture) shall be divided between said separate trust estates held under said Indenture in equal shares or parts, except and unless it shall be otherwise directed in the instrument of gift making an addition to the trust estate held under said Indenture.

Third. The net income of each of the three trust estates held under said Indenture shall be paid over, in whole or in part to the beneficiary or beneficiaries from time to time entitled to share therein, as and when the Trustees acting under said Indenture shall be requested or directed to pay over the same by an instrument in writing, signed by any two of the original beneficiaries named in said Indenture, viz: Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, and the net income from each of said trusts not paid over to the beneficiaries as aforesaid, shall be added to the principal of the trust fund from which it is derived, as and when the same shall come into the hands of the said Trustees.

In the event of the death of John P. Wilson, Jr. his wife, Alice B. Wilson, may sign any such request or direction for the distribution of said net income in his place, with like effect as though he were living and had signed the same; and in the event of the death of Anna W. Dickinson her husband, William R. Dickinson, may sign any such request or direction for the distribution of said net income in her place, with like effect as though she were living and had signed the same.

In the event of the death of any of said original beneficiaries named in said Indenture, the net income from the trust estate held under said Trust Indenture, which such deceased

beneficiary would have been entitled to receive if living, shall be paid over and distributed to the issue of the said grantor, John P. Wilson, in accordance with any directions given by such beneficiary in and by his or her last will and testament; and in default of any such direction or appointment, then to the issue surviving, from time to time, if any, of such deceased beneficiary per stirpes; and in default of such issue, then to the issue surviving, from time to time, of the said grantor, John P. Wilson, per stirpes.

Fourth. Distribution of the Principal of the Trust Estate. Upon the termination of the trusts established by said Indenture, the several trust estates held thereunder shall be paid over and distributed as follows:

The several trust estates held in trust under said Indenture for the benefit respectively of said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, shall be paid over, conveyed and delivered to them respectively. But if any of said beneficiaries shall not then be living the trust estate which such deceased beneficiary would have been entitled to receive if living shall be paid over and distributed to the then surviving issue of said grantor, John P. Wilson, in such shares and interests, and subject to such trusts, as may be directed in and by the last will and testament of such deceased beneficiary; and in default of any such direction or appointment, then to the surviving issue, if any, of such deceased beneficiary per stirpes; and in default of such surviving issue, then to the surviving issue of the said grantor, John P. Wilson, per stirpes.

Fifth. All the provisions of the said Trust Indenture (including the power to modify, alter and change the said Indenture as the same shall be in force after the delivery of this instrument to the said Trustees), except as the same are expressly or necessarily modified or altered by the terms of this instrument, shall remain and continue in full force and effect.

On December 1, 1920, an instrument was executed by the beneficiaries and the grantor canceling the first paragraph of the "Third" section of the amendment made June 19, 1919, and substituting therefor provisions reading the same as the first two paragraphs of Article III (2) of further amendments made December 6, 1920, as set forth below.

Articles II, III and IV of the indenture of March 19, 1913, were altered by an agreement executed by the beneficiaries

on December 6, 1920, with the written approval of the grantor. The changes made in Article II were not material. Article III reads as follows:

(1) The trust funds and estate held under this Trust Indenture shall be kept divided by said Trustees into three (3) equal parts, each of which shall be held and administered as a separate trust for the benefit respectively of one of the three children of said party of the first part, hereinbefore named, subject, however, to the conditions, limitations and provisions hereinafter set forth.

A separate account shall be kept by the said Trustees of each of said trusts, and the investments in each of said separate trusts shall at all times be kept the same, both in kind and quantity, as near as may be, and to that end joint investments may be made by the Trustees on behalf of said separate trusts, each trust contributing an equal amount of the funds used in making such joint investments.

Any and all additions to the trust estate held under this Indenture (other than those from the accumulation of income from the separate trust estates) shall be divided between said separate trust estates held under this Indenture, in equal shares or parts, except and unless it shall be otherwise directed in the instrument of gift making an addition to the trust estate held under this Indenture.

Any property belonging to said trust estate may be taken and held for convenience in the name of a nominee of the said Trustees, or in the name of either of said Trustees, or in the name of said Trustees as joint tenants, without the addition of the word "Trustee" or "Trustees," or words indicating that such property is held in trust.

(2) The said Trustees shall in each year pay out as much of the net income from each of said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate as shall not have been paid out

during such year under the above clause, shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said Trustees shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by the
79 said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the Trustees shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid.

Any request in writing for the distribution of any part of the income of any of said trusts may be signed by the guardian of any beneficiary who may be a minor or under disability, with like effect as though such request had been signed by the beneficiary in person, free from disability.

(3) From and after the death of any one of the original beneficiaries under this Indenture, the net income which he or she would have been entitled to receive if living, shall be paid to the issue of said party of the first part, in accordance with any directions in regard thereto contained in the last will and testament of such deceased beneficiary, and in default of any such direction or appointment then to the issue surviving from time to time, if any, of such deceased beneficiary, per stirpes; and in default of such issue then to the issue surviving from time to time of the said party of the first part, per stirpes.

Article IV contains no material changes in the original agreement as amended June 19, 1919. Each of the instruments mentioned above was delivered to the petitioners, as trustees, a short time after its execution. The amendments to the trust indenture were made for the purpose of facilitating the administration of the trusteed property in the event of death of a beneficiary and to reduce liability for taxes on income earned by the assets held in trust.

Prior to the time the amendment of June 19, 1919, became effective the trustees administered the property as a single trust. On July 1, 1919, they closed out the capital account maintained for the assets and opened up an account for each beneficiary for each asset held in trust. To these accounts

the trustees debited the undivided one-third interest of each of the beneficiaries in the property held in trust. Thereafter, including the taxable years, whenever income was received from any asset, one third thereof was credited to the account kept for the asset under the names of the beneficiaries. Disbursements made by the trustees were charged to the accounts in a like manner. Only one bank account was maintained by the trustees after July 1, 1919. All cash received from the property held in trust was deposited in, and all disbursements were made from, such account.

There was not at any time a physical division of any of the property held under the trust indenture of March 19, 1913. The stock held under the instruments was in the names of the petitioners, as trustees under the deed of trust of John P. Wilson, dated March 19, 1913, or as joint tenants. They held the real estate acquired prior to June 19, 1919, as joint tenants. Each time a piece of real property was conveyed to them, the trustees executed a declaration to the effect that the property was being held under the terms of the trust deed of March 19, 1913. The trustees did not execute new declarations of trust after June 19, 1919, reciting that the real estate was being held for the benefit of three new trusts. At some undisclosed time the petitioners, as joint tenants of the real estate, transferred the properties to themselves as trustees under the trust deed of March 19, 1913. Cash and property received by the trustees after June 19, 1919, was immediately posted to the accounts of the beneficiaries, an undivided one-third interest to each.

Martha Wilson died December 25, 1923, a single person without issue. She did not exercise the power of appointment granted her by the terms of the trust deed of March 19, 1913, as amended. The accounts kept by the trustees under her name were not changed after her death.

For the years 1924 to 1928, inclusive, the trustees filed separate fiduciary and income tax returns for each beneficiary. The same amounts of gross income, deductions, and tax liability were shown in each of the three sets of returns filed for each year. In his audit of the returns the respondent held that the alleged trusts were taxable on the basis of a single trust and return for each year.

OPINION.

SEAWELL: By stipulation of the parties our decision is limited to the sole question of whether the trust deed of March 19, 1913, as amended in 1919 and 1920, created one trust or three trusts. The petitioners contend that the amendments made thereto created three separate and distinct trusts, one for each beneficiary of the original trust, and that the income earned from the property held by them under the indenture, as amended, should be taxed on the basis of three trusts instead of one. The respondent adheres to the conclusion he reached when proposing the deficiencies, that but one trust was in existence throughout the taxable years.

The Supreme Court has said that "No general rule can be stated that will determine when a conveyance will carry with it the whole beneficial interest, and when it will be construed to create a trust; but the intention is to be gathered in each case from the general purpose and scope of the instrument." *Colton* v. *Colton,* 127 U. S. 300. Whether a trust has been created is largely a question of fact, *McCartney* v. *Ridgway,* 160 Ill. 129; 43 N. E. 826, and one alleging the existence of a trust has the burden of proving it by clear and explicit proof in the light of all of the attending circumstances. *Allen* v. *Withrow,* 110 U. S. 119; *Trubey* v. *Pease,* 240 Ill. 513; 88 N. E. 1005; *Hinton* v. *Pritchard,* 107 N. C. 128; 12 S. E. 242.

80 This rule, however, is not so strict as to require that nothing be left to inference or implication. *Orr* v. *Yates,* 209 Ill. 222; 70 N. E. 731; *Osborn* v. *Rearick,* 325 Ill. 259; 156 N. E. 802. It has also been held that to establish a trust three elements must be present, namely, sufficient words to raise it, a definite subject, and an ascertained object. *Mills* v. *Newberry,* 112 Ill. 123; 1 N. E. 156; *Snyder* v. *Snyder,* 280 Ill. 467; 117 N. E. 465; *Carter* v. *Gibson,* 29 Neb. 324; 25 N. W. 634.

The parties are agreed that the indenture of March 19, 1913, created only one trust. Whether more than one trust existed throughout the taxable years depends upon the intent of the amendments made thereto in 1919 and 1920.

The trust deed gave the beneficiaries broad powers respecting modifications to the instrument. The respondent does not question the right of the beneficiaries to alter the indenture in the manner they did, but claims, however, that the amendments are merely directory and to a limited extent operate to

segregate the several beneficial interests for bookkeeping purposes.

John P. Wilson, Jr., one of the beneficiaries of the original trust, who signed all of the amendments as such, testified, without contradiction, that the purpose of the amendments was to establish three trusts in place of the one then in existence. There appears to be ample language in the several amendments to show intent of all the parties thereto to create three separate and distinct trusts. Section "First" of the first amendment provided for the division of the trust "into three separate and equal parts or shares," each to be designated by the respective names of the beneficiaries. Section "Second" required the division "between said separate trust estates" of additions to the trust estate. In section "Fourth" it was provided that "Upon the termination of the trusts established" the "several trust estates held in trust" under the indenture should be paid over in the manner prescribed. The second amendment, executed December 1, 1920, substituting new provisions for section "Third" of the first modification, provided for the payment of net income each year "from each of the said separate trusts" and that any net income from "each separate trust estate" not paid out within the year of its receipt should be added to the principal of the "separate trust estate" from which it was derived. The final amendment continues all of these provisions in effect, and contains other language evidencing intent to establish and continue the existence of three trusts. Article III (1) provides that the estate shall be kept divided into three equal parts "each of which shall be held and administered as a separate trust for the benefit respectively of one of the three children of said party of the first part" and that the trustees shall keep a separate account for "each of said trusts."

It is true that other provisions of the instrument, as amended, contain terms usually found in documents establishing a single trust. For instance, in the second paragraph of the first amendment (now the third paragraph of Article III (1)) of the words "trust estate" are used in connection with provisions for the treatment of additions of property acquired by the trustees under the instrument. The same sentence, however, as already pointed out, provides for the division of any additional property acquired "between the said separate trust estates." A similar circumstance appears in Article IV (1) and (2). The terms "trust" and "trust estate" are used in Article V, which was not modified in any respect.

The language referred to, on which the respondent relies to some extent as supporting his view, is evidence of an intention to create a single trust. We may not, however, decide the issue from that alone. All of the provisions of the instrument, as amended, must be considered in the light of all of the attending circumstances. When this is done, the terms referred to as indicating intent to establish but one trust must give way to clearer and more certain language showing that the purpose and intent of the amendments was to create three trusts for the one then in existence. The intention is clear and we think sufficient words were used in the amendments to create three separate and distinct trusts.

The case of *Johnson* v. *United States,* 65 Ct. Cls. 285; certiorari denied, 278 U. S. 611, is cited by the respondent as being on all fours with this one. In that case no provision was made, as there was here, for holding and administering each part of the trust fund as a trust separate and distinct from the other shares. In the final analysis cases of this sort must stand or fall on the basis of their own peculiar facts. It has been said that "no will has a twin brother." *In re King's Estate,* 200 N. Y. 189; 93 N. E. 484. The same is equally as true as regards instruments executed with respect to the creation of trusts.

We do not think that the failure of the trustees to make a physical division of the property controls the question. They had ample authority to assign an undivided one-third interest in the whole or any part of the property to the beneficiary of each trust (section "First", amendment June 19, 1919) and had broad powers in holding property belonging to the trusts. Article III (1). Neither do we think the parties in interest should be criticized for pursuing the course they did to create the three trusts. More than one trust may be established by a single instrument, *DeVer H. Warner,*
81 *Trustee,* 7 B. T. A. 1292; affd., 26 Fed. (2d) 1023, and we are not aware of any authority against the establishment of more than one trust by amendments to an instrument creating a single trust. The beneficiaries and grantor could have terminated the single trust and, with the same property, created three trusts. The device adopted accomplished the same result by a shorter method. Had the trustees acted as though there were but one trust, they could have by proper proceedings been forced to administer the assets under three separate trusts.

From all the facts we hold that the instrument, as amended, created three taxable trusts, and that for each taxable year

the income from all the property held in trust, not distributed or distributable to the beneficiaries, should be taxed on the basis of three separate trusts and three separate returns.

The parties stipulated that in case we so found, orders could be entered finding that there are no deficiencies due from, nor overpayments due to, the petitioners respecting income tax liability as trustees under the indenture of March 19, 1913, as amended, for the taxable years. In accordance therewith, orders to that effect will be entered herein.

82 UNITED STATES BOARD OF TAX APPEALS. Entered N 1933.

* * (Caption—52931) * *

DECISION.

Pursuant to the determination of the Board, as set forth in its report promulgated November 7, 1933, it is

Ordered and Decided: That there are no deficiencies due from, nor overpayments due to, the petitioners for the years 1924, 1925 and 1926.

Enter: Nov 9 1933

(Signed) H. F. SEAWELL
Member.

(Seal)

175 UNITED STATES BOARD OF TAX APPEALS. Entered 1934.

* * (Caption—52931 and 57226) * *

ORDER ENLARGING TIME.

For cause appearing of record, it is

Ordered: That the time for transmission and delivery of the record sur petition for review of the above entitled proceeding by the United States Circuit Court of Appeals, Seventh Circuit, be and it is hereby extended to September 10, 1934.

(Signed) ERNEST H. VAN FOSSAN
Member.

(Seal)

Dated Washington, D. C.,
August 8, 1934.

Now, September 5, 1934, the foregoing order enlarging time certified from the record as a true copy.

B. D. GAMBLE
Clerk, U. S. Board of Tax Appeals.

Nov. 9. 83 UNITED STATES BOARD OF TAX APPEALS

* * (Caption—57226) * *

DECISION.

Pursuant to the determination of the Board, as set forth in its report promulgated November 7, 1933, it is

Ordered and Decided: That there are no deficiencies due from, nor overpayments due to, the petitioners for the year 1928.

Enter: Nov 9 1933

(Signed) H. F. SEAWELL
Member.

(Seal)

eb. 14? 92 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

* * (Caption) * *

NOTICE OF FILING PETITION FOR REVIEW.

Filed Feb. 14, 1934.

To:

William B. McIlvaine and John P. Wilson, Jr.,
Trustees under Deed of Trust of John P. Wilson,
140 South Dearborn Street,
Chicago, Illinois.

John P. Wilson, Esq.,
Clay Judson, Esq.,
140 South Dearborn Street,
Chicago, Illinois.

You are hereby notified that the Commissioner of Internal Revenue did, on the 7th day of February, 1934, file with the Clerk of the United States Board of Tax Appeals at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Seventh Circuit, of decisions of the Board heretofore rendered in the above-entitled case. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

93 Dated this 7th day of February, 1934.

(Signed) E. BARRETT PRETTYMAN
E. Barrett Prettyman,
General Counsel,
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 9 day of February, 1934.

(Sgd) WILLIAM B. McILVAINE
(Sgd) JOHN P. WILSON
Trustees under Deed of Trust of John P. Wilson.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 9 day of February, 1934.

(Sgd) JOHN P. WILSON
(Sgd) CLAY JUDSON
Attorneys for Respondent on Review.

84 IN THE UNITED STATES CIRCUIT COURT OF APPEALS Filed Fe 1934.

* * (Caption) * *

PETITION FOR REVIEW AND ASSIGNMENTS OF ERROR.

Filed Feb. 7, 1934.

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Seventh Circuit:

Now comes Guy T. Helvering, Commissioner of Internal Revenue, by his attorneys, Frank J. Wideman, Assistant Attorney General, and E. Barrett Prettyman, General Counsel, Bureau of Internal Revenue, and respectfully shows:

I.

Jurisdiction.

That he, the petitioner on review, is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States.

The respondents on review, William B. McIlvaine and John P. Wilson, Jr., were at all times material hereto and now are trustees under a deed of trust executed by John P. Wilson

and said respondents on review under date of March 19, 1913, and under said deed of trust as subsequently
85 amended; and as fiduciaries under said Deed of Trust as amended, respondents on review are subject to the provisions of the Federal Income Tax laws. Each of the respondents on review are inhabitants and residents of Cook County, State of Illinois, with their principal office as fiduciaries at 140 South Dearborn Street, Chicago, Illinois. Respondents on review filed their fiduciary returns of income, and their income tax returns, for the calendar years 1924, 1925, 1926 and 1928 with the United States Collector of Internal Revenue for the 1st District of Illinois at Chicago, Illinois, whose office was and is located within the Seventh Circuit.

This is a proceeding for review by the Circuit Court of Appeals for the Seventh Circuit, pursuant to statute in such cases made and provided, of the action taken by the United States Board of Tax Appeals in its report promulgated November 7, 1933, and in its decisions rendered pursuant thereto and entered November 9, 1933, redetermining that there are no deficiencies in income tax due from, nor overpayments due to, the respondents on review for the years 1924, 1925, 1926 and 1928, instead of deficiencies of $20,949.60, $13,758.96, $11,045.29 and $7,148.52, respectively, as previously determined by the Commissioner of Internal Revenue.

II.

Nature of the Controversy.

Under date of March 19, 1913, John P. Wilson, late of Chicago, Illinois, created a trust by a trust indenture bearing that date executed by himself as grantor and by the respondents on review as trustees. By this indenture certain prop-
erties, including stocks, bonds and notes, were trans-
86 ferred to the respondents on review as trustees to be held in trust principally for the benefit of the grantor's three children, Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson. The trust was to terminate at the latest at the death of the survivor of said three children and might be terminated in whole or in part by an instrument in writing signed by said three children, or the survivors of them, with the consent of the grantor if living. The trust indenture contained a provision reading as follows:

"Any of the provisions of this indenture may be altered, changed or modified in any respect and to any extent at any time by an instrument in writing signed by the three beneficiaries hereinbefore named, or the survivors or survivor of them which shall be delivered to the said Trustees or one of them, provided, however, that such instrument must be approved in writing by the said party of the first part, if made during his life, and after the date of any such modification or alteration this indenture as so modified or altered shall be in force and govern the rights and powers of all parties concerned, the same in all respects as though said indenture had originally been executed in such modified or altered form. * * *"

Under dates of June 19, 1919, December 1, 1920, and December 6, 1920, certain amendments of the original trust indenture were duly executed and approved. As so amended the trust indenture was in force and effect during the calendar years 1924, 1925, 1926 and 1928. During those calendar years the respondents on review as trustees under said trust indenture as amended received certain income from the property held in trust, a portion of which was not currently distributed or distributable to the beneficiaries, which was accordingly taxable to the respondents on review as fiduciaries. The respondents on review made their fiduciary returns of income, and their income tax returns, for said taxable years, respectively, on the theory that the amend-
87 ments above referred to operated to establish three separate trusts for Federal income tax purposes, thereby obtaining the benefit of three exemptions and also the benefit of lower surtax rates than would be the case if the same amount of income had been reported in a single return.

Upon audit of said returns the Commissioner of Internal Revenue found and held that the trust indenture of March 19, 1913, as amended, had the effect of creating and establishing but a single trust for income tax purposes. Accordingly, under date of December 20, 1930, the Commissioner mailed to the respondents on review a notice of deficiency for the years 1924, 1925 and 1926 from which the respondents on review duly appealed to the United States Board of Tax Appeals by petition filed February 16, 1931, under Docket No. 52931. Thereafter, under date of March 7, 1931, the Commissioner duly mailed to the respondents on review a notice of deficiency with respect to the year 1928, from which an appeal was duly taken by petition filed with the Board of Tax Appeals April 25, 1931, under Docket No. 57226.

The two proceedings were consolidated for hearing and report. Prior to trial the case involved several issues all but one of which were disposed of by a stipulation filed at the hearing in which revised deficiencies for each of said years were conditionally agreed to in the event the main issue should be decided in favor of the Commissioner. The question submitted to the Board of Tax Appeals was:

"Whether that part of the income from the property held in trust by the petitioners under the deed of trust of John P. Wilson dated March 19, 1913, as amended, which was not distributed or distributable to the beneficiaries thereof in the respective years involved herein (there being no controversy in respect of the amount of such income) should be subjected to income taxes on the basis of a single trust and a single return (1040) for each year as held by the Commissioner, or on the basis of three separate trusts and three separate returns (1040) for each year as contended by the petitioners."

The Board of Tax Appeals after due hearing promulgated its report, including its findings of fact and opinion, under date of November 7, 1933, concluding that the trust indenture as amended created three taxable trusts, and that for each taxable year the income from all the property held in trust, not distributed or distributable to the beneficiaries, should be taxed on the basis of three separate trusts and three separate returns. Pursuant thereto the Board rendered its decisions, which were entered under date of November 9, 1933, redetermining that there were no deficiencies and no overpayments for the years in question.

III.

Assignments of Error.

The Commissioner of Internal Revenue being aggrieved by the action of the United States Board of Tax Appeals and by the findings of fact and conclusions of law made by the Board is desirous to obtain a review thereof by the Circuit Court of Appeals for the Seventh Circuit. As reasons for such review he alleges that the United States Board of Tax Appeals committed the following errors:

1. The Board's decisions are contrary to law.
2. The Board erred in holding that the trust instrument dated March 19, 1913, as amended in 1919 and 1920, created three taxable trusts.

3. The Board erred in holding that the income from the property held in trust under said instrument as amended, which was not distributed or distributable to the beneficiaries, should be taxed on the basis of three separate trusts and three separate returns.

89 4. The Board's findings or conclusions, to the effect that the purpose and intent of the amendments of 1919 and 1920 was to create three trusts for the one then in existence, and that sufficient words were used in the amendments to create three separate and distinct trusts, are not sustained by substantial evidence.

5. The Board's findings or conclusions, to the effect that the device adopted accomplished the same result as though the beneficiaries and grantor had terminated the single trust and with the same property created three trusts, are not sustained by substantial evidence.

6. The Board's findings, to the effect that the income for the years 1924, 1925, 1926 and 1928 from the property held in trust under said instrument dated March 19, 1913, as amended, was derived one-third each from property held under three separate and distinct trusts, are not sustained by substantial evidence.

7. The Board erred in failing to hold that that part of the income from the property held in trust by the respondents on review as trustees under the deed of trust of John P. Wilson dated March 19, 1913, as amended, which was not distributed or distributable to the beneficiaries thereof in the respective years, should be subjected to income taxes on the basis of a single trust and a single return for each taxable year.

8. The Board erred in deciding that there are no deficiencies due from the respondents on review for the years 1924, 1925, 1926 and 1928.

90 9. The Board erred in failing to decide that there are deficiencies due from the respondents on review, as trustees under said deed of trust dated March 19, 1913, as amended, as follows:

Taxable Year	Correct Deficiency in Tax
1924	$13,419.81
1925	7,012.47
1926	4,691.12
1928	5,577.64

Wherefore, the Commissioner of Internal Revenue petitions that the action taken by the United States Board of Tax Appeals in this proceeding be reviewed by the United States Circuit Court of Appeals for the Seventh Circuit, that a transcript of the record be prepared in accordance with law and the rules of said Court and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of may be reviewed and corrected by said Court.

(Sgd) FRANK J. WIDEMAN
Assistant Attorney General.
(Signed) E. BARRETT PRETTYMAN,
General Counsel,
Bureau of Internal Revenue.

Of Counsel:
F. R. SHEARER,
Special Attorney,
Bureau of Internal Revenue.

91 United States of America }
District of Columbia } ss

F. R. SHEARER, being duly sworn, says that as Special Attorney in the Bureau of Internal Revenue he is counsel of record for the Commissioner of Internal Revenue in the instant proceeding before the United States Board of Tax Appeals, and that as such he is duly authorized to verify the foregoing petition for review; that he has read said petition and is familiar with the contents thereof; that said petition is true of his own knowledge except as to the matters therein alleged on information and belief, and as to these matters he believes it to be true.

F. R. SHEARER
Special Attorney,
Bureau of Internal Revenue.

Sworn and subscribed to before me this 6th day of February, 1934.

MARCELETTE M. TAYLOR
(Seal) *Notary Public.*

My commission expires March 31, 1935.

172 UNITED STATES BOARD OF TAX APPEALS Entered 1934.

* * (Caption—52931 and 57226) * *

ORDER ENLARGING TIME.

Upon motion of counsel for petitioner, it is

Ordered that the time for preparation of the evidence and for transmission and delivery of the record sur petition for review of the above entitled proceeding in th United States Circuit Court of Appeals for the Seventh Circuit be and it is hereby extended to May 8, 1934.

(Signed) EUGENE BLACK
Member.

(Seal)

Dated: Washington, D. C.
April 2, 1934.

Now, September 5, 1934, the foregoing order enlarging time certified from the record as a true copy.

B. D. GAMBLE
Clerk, U. S. Board of Tax Appeals.

173 UNITED STATES BOARD OF TAX APPEALS Entered 1934.

* * (Caption—52931 and 57226) * *

ORDER ENLARGING TIME.

On motion of counsel for the petitioners, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceedings in the United States Circuit Court of Appeals, Seventh Circuit, be and it is hereby extended to June 8, 1934.

(Signed) EUGENE BLACK
Member.

(Seal)

Dated: Washington, D. C.
May 4, 1934.

Now, September 5, 1934, the foregoing order enlarging time certified from the record as a true copy.

B. D. GAMBLE
Clerk, U. S. Board of Tax Appeals.

June 1, 174 UNITED STATES BOARD OF TAX APPEALS.

* * (Caption—52931 and 57226) * *

ORDER ENLARGING TIME.

On motion of counsel for the petitioner, it is

Ordered: That the time for preparation of the evidence and transmission and delivery of the record sur petition for review of the above entitled proceeding in the United States Circuit Court of Appeals, Seventh Circuit, be and it is hereby extended to August 8, 1934.

(Signed) EUGENE BLACK
Member.

(Seal)

Dated: Washington, D. C.,
June 1, 1934.

Now, September 5, 1934, the foregoing order enlarging time certified from the record as a true copy.

B. D. GAMBLE
Clerk, U. S. Board of Tax Appeals.

July 20, 176 IN THE UNITED STATES CIRCUIT COURT OF APPEALS

* * (Caption) * *

PRAECIPE FOR RECORD.

Filed Jul. 20, 1934.

To the Clerk of the United States Board of Tax Appeals:

You will please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause in connection with the petition for review by the Circuit Court of Appeals for the Seventh Circuit, heretofore filed by the Commissioner of Internal Revenue:

1. Docket entries of the proceedings before the Board.
2. Pleadings before the Board:

(a) Petitions filed February 16, 1931, and April 25, 1931, including the annexed copies of deficiency letters dated December 20, 1930, and March 7, 1931, and the trust indenture dated March 19, 1913, with amendments thereto dated June 19, 1919, December 1, 1920, and December 6, 1920, attached to the petition bearing Docket No. 57226.

177 (b) Answers filed April 18, 1931 and July 6, 1931.

3. Findings of fact, opinions, decisions and orders of the Board:

(a) The Board's report promulgated November 7, 1933.

(b) Two decisions entered November 9, 1933.

4. Commissioner's petition for review and assignments of error filed February 7, 1934.

5. Notice of filing petition for review and assignments of error, dated February 7, 1934, together with acknowledgments of service.

6. Statement of the evidence as settled and allowed.

7. Orders enlarging time for preparation of the evidence and for the transmission and delivery of the record not included in record.

8. This praecipe.

(Signed) ROBERT H. JACKSON
Assistant General Counsel for the Bureau of Internal Revenue,
Attorney for Petitioner on Review.

Service of copy of the within praecipe is hereby admitted this 9th day of July, 1934.

JOHN P. WILSON
CLAY JUDSON
Attorneys for Respondent on Review.

178 UNITED STATES BOARD OF TAX APPEALS
* * (Caption—52931 and 57226) * *

CERTIFICATE.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages 1 to 177, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax Appeals, at Washington, in the District of Columbia, this 5th day of September, 1934.

B. D. GAMBLE
(Seal) *Clerk, United States Board of Tax Appeals.*

United States Circuit Court of Appeals for the Seventh Circuit

I, Frederick G. Campbell, clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 169, inclusive, contain a true copy of the printed record, printed under my supervision and filed on the eighth day of October 1934, on which the following entitled cause was heard and determined: Commissioner of Internal Revenue, Petitioner, vs. William B. McIlvaine, and John P. Wilson, Jr., Trustees Under Deed of Trust of John P. Wilson, Respondents No. 5327, October Term, 1934, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 16th day of October, A. D. 1935.

[SEAL.]

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, begun and held in the United States Court Room, in the City of Chicago, in said Seventh Circuit on the second day of October, 1934, of the October Term in the year of our Lord One Thousand Nine Hundred and Thirty-Four, and of our Independence the One Hundred and Fifty-Ninth.

5237

COMMISSIONER OF INTERNAL REVENUE

vs.

WILLIAM B. McILVAINE AND JOHN P. WILSON, JR., TRUSTEES UNDER Deed of Trust of John P. Wilson

Petition for review of order of the United States Board of Tax Appeals

And on, to wit: On the thirtieth day of April 1935, the following further proceedings were had and entered of record, to wit:

Tuesday, April 30, 1935, court met pursuant to adjournment and was opened by proclamation.

Before: Hon. EVAN A. EVANS, circuit judge; Hon. WILLIAM M. SPARKS, circuit judge; Hon. SAMUEL ALSCHULER, circuit judge.

5237

COMMISSIONER OF INTERNAL REVENUE

v.

WILLIAM B. McILVAINE, ET AL.

Petition for review of order of the United States Board of Tax Appeals

Now this day come the parties by their counsel and this cause now comes on to be heard on the printed record and briefs of counsel, and on oral arguments by Mr. John MacC. Hudson, counsel for petitioner, and by Mr. Clay Judson, counsel for respondent, and the court having heard the same takes this matter under advisement.

And afterwards, to wit: On the nineteenth day of July, 1935, there was filed in the office of the clerk of this court the opinion of the court, which said opinion is in the words and figures following, to wit:

In the United States Circuit Court of Appeals for the Seventh Circuit

October Term, 1934; April Session, 1935. No. 5327

COMMISSIONER OF INTERNAL REVENUE, PETITIONER

vs.

WILLIAM B. McILVAINE AND JOHN P. WILSON, JR., TRUSTEES UNDER Deed of Trust of John P. Wilson, respondents

Petition for review of decisions of the United States Board of Tax Appeals

July 19, 1935.

Before EVANS, SPARKS, and ALSCHULER, circuit judges.

ALSCHULER, *Circuit Judge:* Petitioner seeks review of decision of the United States Board of Tax Appeals denying petitioner's contention that the taxable estate comprises three trusts instead of a single trust. As a single trust the income-tax rate for the years in question would have been carried into the higher brackets sufficiently to make the taxes in controversy larger by about $30,000 than if taxed as three trusts; and it is for this difference that the Commissioner assessed deficiencies for the respective years. The Board found there were three trusts, and no deficiencies.

March 19, 1913, John P. Wilson conveyed to his son, John P., Jr., and William B. McIlvaine, in trust, certain securities for the benefit of his three children, John, Martha, and Anna. The trustees were authorized to receive the entire income, and to sell the securi-

ties and reinvest the proceeds in accordance with the written directions of any two of the beneficiaries; and to accumulate the net income for fifteen years unless the period be shortened by the beneficiaries with the approval of the grantor if living; and after that time to distribute all net income in equal shares to the beneficiaries as provided. Provision was made that the instrument might be altered, changed, or modified to any extent by the three children with the approval of the grantor if living.

June 19, 1919, an amendment was made to the trust instrument providing that the trust property should be divided into three separate and equal trusts, each part to be separately held in trust by the trustees severally for one of the donor's said three children, and that the trustees should assign an undivided one-third interest in all the property they then held in trust for each of the children; and that all additions to the trust estate should be divided equally between the separate trust estates unless it be otherwise directed in the instrument of gift; and that the net income of the three trust estates should be paid to the beneficiaries entitled thereto upon the request of any two of the original beneficiaries, the income which was not paid out to be added to the principal of the trust fund from which it was derived.

December 1, 1920, a second amendment was made which canceled certain parts of the amendment of June 19, 1919, and substituted for it provisions which are the same as paragraphs 1 and 2 of article III of the third amendment which was duly made December 6, 1920. Article III of the third amendment is set forth in the margin.[1]

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[1] (1) The trust funds and estate held under this trust indenture shall be kept divided by said trustees into three (3) equal parts, each of which shall be held and administered as a separate trust for the benefit, respectively, of one of the three children of said party of the first part, hereinbefore named, subject, however, to the conditions, limitations, and provisions hereinafter set forth.

A separate account shall be kept by the said trustees of each of said trusts, and the investments in each of said separate trusts shall at all times be kept the same, both in kind and quantity, as near as may be, and to that end joint investments may be made by the trustees on behalf of said separate trusts, each trust contributing an equal amount of the funds used in making such joint investment.

Any and all additions to the trust estate held under this indenture (other than those from the accumulation of income from the separate trust estates) shall be divided between said separate trust estates held under this indenture, in equal shares or parts, except and unless it shall be otherwise directed in the instrument of gift making an addition to the trust estate held under this indenture.

Any property belonging to said trust estate may be taken and held for convenience in the name of a nominee of the said trustees, or in the name of either of said trustees, or in the name of said trustees as joint tenants, without the addition of the word "trustee" or "trustees", or words indicating that such property is held in trust.

(2) The said trustees shall in each year pay out as much of the net income from each of said separate trusts to the beneficiaries from time to time entitled to share therein as shall during such year be requested or directed by one or more instruments in writing, signed by a majority in interest of the beneficiaries then entitled to share or participate in any distribution made of the income of all of said trusts. But equal payments must be made out of the net income from each of said separate trusts, to the end that said several separate trusts may be maintained on a basis of equality in amount so far as practicable.

So much of the net income received in any year from each separate trust estate as shall not have been paid out during such year under the above clause shall be added to and form a part of the principal of the separate trust estate from which it was derived; provided, however, that said trustees shall in each year pay out for charitable uses and purposes so much of the net income of said trusts as shall be requested by an instrument in writing signed by said Martha Wilson, John P. Wilson, Jr., and Anna W. Dickinson, or the survivors or survivor of them, which payments shall be made in equal amounts from each of said separate trusts, and the trustees shall not be under any obligation to inquire as to the nature of the uses for which said payments are requested to be made, but shall be free from any liability by reason of any payment made in pursuance of a written request signed as aforesaid.

Any request in writing for the distribution of any part of the income of any of said trusts may be signed by the guardian of any beneficiary who may be a minor or under

It may be assumed that the trust instrument as originally drawn created a single trust. Concededly the trust, by its terms and with the consent of the beneficiaries and of donor, if living, might be altered and amended in any of its provisions, so that there might be constituted any number of trusts; and it is unquestioned that the motive for setting up a large number of trusts is not here material. So even though the sole purpose of the changes which were made was to bring about a reduction in the Federal tax upon the income from the trust property, this would not transgress any right of the Government. The sole question is whether, under the amendments made, there were three trusts.

That it was the definite intent of the donor by these amendments to set up three separate trusts is too plain for controversy. In the amendments he repeatedly so states; and unquestionably the beneficiaries, in consenting to the amendments, did so with the intent and under the assumption that, whatever may have been the previous status, thereafter there were to be three separate trusts. While the intent of the parties is a prime factor in construing such an instrument, and in case of doubt this is accorded high evidentiary value, yet the instrument itself, where it is sufficiently plan, must determine its character and scope. Colton v. Colton, 127 U. S. 300; State Savings Loan & Trust Co. v. Commissioner, 63 F. (2d) 482 (C. C. A. 7); Hubbell v. Burnet, 46 F. (2d) 446 (C. C. A. 8).

True, there was here no provision for physical division of the trust property by segregating each portion of it. Under the terms of the amended instrument the corpus of each of the three trusts consisted of an undivided one-third interest. The physical property remained undivided in the possession of the trustees, who were the same for each of the three trusts. We perceive no valid reason why this may not be so, and it is well settled by authority that an undivided interest in real or personal property may properly be the subject matter of a trust. Vanderpoel v. Loew, 112 N. Y. 167; Starbuck v. Farmers Loan & Trust Co., 51 N. Y. S. 58, 28 App. Div. 272; Gurnett v. Mutual Life Ins. Co., 356 Ill. 612; Bogert Trusts and Trustees, Vol. 1, pp. 351 and 352; Tentative Draft No. 1 of the Restatement of the Law of Trusts, Sec. 73.

It is well settled that separate and several trusts may be created by the same instrument, and be administered by the same trustees. DeVer H. Warner, Trustee, v. Commissioner, 7 B. T. A. 1292 (affirmed 26 F. (2d) 1023); Lynchburg Trust & Savings Bank v. Commissioner, 68 F. (2d) 356; Carruth v. Carruth, 148 Mass. 431; Claflin v. Dewey, 177 Mass. 166.

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disability, with like effect as though such request had been signed by the beneficiary in person, free from disability.

(3) From and after the death of any one of the original beneficiaries under this indenture, the net income which he or she would have been entitled to receive if living, shall be paid to the issue of said party of the first part, in accordance with any directions in regard thereto contained in the last will and testament of such deceased beneficiary, and in default of any such direction or appointment then to the issue surviving from time to time, if any, of such deceased beneficiary, *per stirpes*; and in default of such issue then to the issue surviving from time to time of the said party of the first part, *per stirpes*.

Just what mode may or should be adopted for possessing and conserving the physical property which is thus subject to the separate trusts in undivided interests is not here of necessary significance. In this case, however, the trustees upon adoption of the amendments assumed to set up separate individual trust accounts for each of the three beneficiaries of the supposed separate trusts, and charged unto themselves as trustees severally for the separate beneficiaries an undivided one-third of the property and funds granted by the donor, and kept the accounts accordingly. What more they could have done to carry out the donor's intent that there should be three separate and distinct trusts is not readily manifest—unless, indeed, they made physical division of the property, which was not essential to the separate trust estates.

In our judgment it was, after the amendments, as if in the very first instance the donor had, by separate instruments, conveyed to trustees, whoever they might have been—the same or different persons—an undivided one-third of the property in trust for the several separate beneficiaries. In such case we do not conceive that it would have made any difference that the three trusts thus created were in all respects equal in value and in treatment, and subject to identical conditions and stipulations, and were to be so kept, as was here the case.

If the conditions and terms of the several trusts so created had differed radically from one another, and there had been different trustees, there would have been no question but that the trusts were separate and several. But is this different if the terms of each of the trusts which the donor thus undertook to create are identical and the trustees the same? This of itself would not amalgamate into one trust that which would otherwise be three.

But we are concerned with income rather than with the physical possession of the property which produces it. While the property subject to the three trusts actually remained in the physical custody of the same persons who became the trustees for each of the three trusts, this was only for the purpose of holding, investing, and conserving it, and for receiving and distributing the income therefrom to the three trusts which the amended instrument created. In this sense these persons, call them trustees, agents, custodians, or what-not, in holding and collecting the income of the undivided property, and receiving the income therefrom, were merely the conduit through which the income, as it was received, was immediately passed to the three trusts.

In so receiving the income these persons became at once equitably the trustees for its transmittal to the three trusts. In such relation the receipt of the entire income will be deemed in equity the receipt of it for its instantaneous passing to and for the three undivided trusts estates. Barnes v. Alexander, 232 U. S. 117; Burckhardt v. Northwestern National Bank, 38 F. (2d) 568. This is particularly true here, where these same persons were acting in the two capacities,

i. e., of holding and conserving the property and collecting the income therefrom, and of taking unto themselves as the trustees of the three separate trusts, as that income is received, the three undivided thirds of it for and on behalf of each of the three distinct trusts set up under the amended trust instrument.

As above indicated the practice was to hold the trust property undivided, and we have treated the matter as though this were required by the trust agreement, reaching the conclusion that even if so required there were three trusts instead of but one. But Article III of the third amendment specifies:

"The trust funds and estate held under this Trust Indenture shall be kept divided by said Trustees into three (3) equal parts, each of which shall be held and administered as a separate trust for the benefit respectively of one of the three children of said party of the first part, hereinbefore named, subject, however, to the conditions, limitations, and provisions hereinafter set forth.

"A separate account shall be kept by the said Trustees of each of said trusts, and the investments in each of said separate trusts shall at all times be kept the same, both in kind and quantity, as near as may be, and to that end joint investments may be made by the Trustees on behalf of said separate trusts, each trust contributing an equal amount of the funds used in making such joint investments."

It does not appear that those in custody of the property literally followed the direction by physically dividing the trust property in the manner specified. Instead of segregating the property as directed and making similar investments for the three trust estates, or joint investments, they followed the practice above indicated of permitting the trust property to remain unsegregated. In all probability literal compliance with the letter of the trust instrument could have been required; but as the financial result to the beneficiaries seems to have been the same, and no question of malfeasance or nonfeasance appears to have arisen, and since the question here concerns not custody or administration of the trust property, but involves only the income which, as it was received, passed at once to these persons in their capacities as separate trustees of the separate trust estates, we refer to this trust provision mainly as indicating definitely the purpose of the parties that there be three separate trusts, a purpose which to all intents, so far as concerns income and the tax thereon, appears to have been fully effectuated.

Our strong inclination to sustain the reasoning and conclusions herein of the Board of Tax Appeals, as reported in 29 B. T. A. 304, is much tempered by the fact that the Circuit court of Appeals of the Second Circuit, in Commissioner v. United States Trust Company of New York, Trustee Under Deed of John P. Wilson, 75 F. (2d) 973, has decided otherwise. This case involved another trust of the same donor with the same beneficiaries as here, originally created about the same date as the one here and subsequently amended at about the same time and in very much the same manner, with some

slight but concededly immaterial differences. To the New York trustee the donor conveyed personal property, and subsequent amendments to the trust were made for the declared purpose of creating three separate trusts wherein the three originally named were the several beneficiaries.

After the amendments the same question arose as to whether the federal income tax should be computed upon the basis of a single trust or three separate trusts; and upon the Board's finding and holding the three trusts were created, which were separately taxable, the Commissioner sought review in the Court of Appeals, which determined that there was in fact but a single trust and reversed the decision of the Board.

It would serve no useful purpose to enter upon further discussion of the propositions there and here considered. Suffice it to say that while we regret to differ from that distinguished court, we are satisfied that the Board properly reasoned and ruled that here three thrusts were created, and the income from each was taxable accordingly and not as a single trust; and that the Board was right in determining there was no deficiency.

The decisions of the Board of Tax Appeals are

Affirmed.

And on the same day, to wit: On the nineteenth day of July 1935, the following further proceedings were had and entered of record, to wit:

Friday, July 19, 1935, court met pursuant to adjournment and was opened by proclamation.

Before: Hon. EVAN A. EVANS, circuit judge; Hon. WILLIAM M. SPARKS, circuit judge; Hon. SAMUEL ALSCHULER, circuit judge.

5327

COMMISSIONER OF INTERNAL REVENUE

vs.

WILLIAM B. McILVAINE, AND JOHN P. WILSON, JR., TRUSTEES UNDER Deed of Trust of John P. Wilson

Petition for review of order of the United States Board of Tax Appeals

This cause came on to be heard on the transcript of the record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof: It is now here ordered and adjudged by this court that the decisions entered in this cause on November 9, 1933, by the United States Board of Tax Appeals be, and the same are hereby affirmed.

United States Circuit Court of Appeals for the Seventh Circuit

I, Frederick G. Campbell, clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten and printed pages, numbered from 1 to 10, inclusive, contain a true copy of the order of April 30, 1935, taking cause under advisement; opinion filed July 19, 1935, and judgment entered July 19, 1935, in the case of Commissioner of Internal Revenue, petitioner, *vs.* William B. McIlvaine and John P. Wilson, Jr. Trustees under deed of trust of John P. Wilson, respondents, no. 5327, October term 1934, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof, I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 16th day of October, A. D. 1935.

[SEAL] FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Order extending time within which to apply for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

On consideration of the motion of counsel for the petitioner in the above-entitled cause, and good cause therefor having been shown, it is now here ordered that the time for filing a petition for a writ of certiorari in the instant case be extended to and including November 1, 1935.

Dated this 17th day of October 1935.

WILLIS VAN DEVANTER,
Associate Justice of the Supreme Court of the United States.

U. S. GOVERNMENT PRINTING OFFICE: 1935

Order allowing certiorari

Filed November 11, 1935

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following No. 169.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

○

FILE COPY

NOV 1

No. 566

In the Supreme Court of the United States

OCTOBER TERM, 1935

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

WILLIAM B. McILVAINE AND JOHN P. WILSON, JR., TRUSTEES UNDER DEED OF TRUST OF JOHN P. WILSON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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In the Supreme Court of the United States

OCTOBER TERM, 1935

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

WILLIAM B. MCILVAINE AND JOHN P. WILSON, JR., trustees under deed of trust of John P. Wilson

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The Solicitor General, on behalf of the Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Seventh Circuit, entered in the above cause on July 19, 1935, affirming the decision of the Board of Tax Appeals.

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 149–159) is reported in 29 B. T. A. 304. The opinion of the Circuit Court of Appeals (R. 172) is reported in 78 F. (2d) 787.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 19, 1935. (R. 177.) Upon motion of the petitioner, this Court by Mr. Justice Van Devanter extended the time for filing a petition for certiorari to and including November 1, 1935. The jurisdiction of this Court is invoked under section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A deed creating a single trust for the equal benefit of three beneficiaries was amended, whereby a separate account was set up for each beneficiary and an undivided one-third interest in the trust was assigned to each account. Did the amendments create three separate and independent trusts, to which proportionate amounts of the income from the property are separately taxable, or did the original single trust continue as such, to which all the income from the property is taxable?

STATUTES INVOLVED

Revenue Act of 1928, c. 852, 45 Stat. 791, 833, 838:

> SEC. 143. FIDUCIARY RETURNS.
>
> (a) *Requirement of return.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he acts, stating specifically the items of gross

income thereof and the deductions and credits allowed under this title—

* * * * *

(4) Every estate or trust the net income of which for the taxable year is $1,500 or over;

(5) Every estate or trust the gross income of which for the taxable year is $5,000 or over, regardless of the amount of the net income; * * *

SEC. 161. IMPOSITION OF TAX.

(a) *Application of tax.*—The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, * * *.

* * * * *

(b) *Computation and payment.*—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor). For return made by beneficiary, see section 143.

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

The material provisions of the Revenue Acts of 1924, c. 234, 43 Stat. 253, and 1926, c. 27, 44 Stat. 9, are found in Sections 219 and 225 and are iden-

tical with the quoted provisions of the Revenue Act of 1928.

STATEMENT

By deed dated March 19, 1913, John P. Wilson transferred certain stocks and securities to the respondents in trust for the equal benefit of his three children, John P. Wilson, Jr., Martha Wilson, and Anna W. Dickinson. The trustees were authorized to receive all income, to sell the property and reinvest the proceeds as well as undistributed income, but only in accordance with the written directions of two of the beneficiaries. The net income was to be accumulated for fifteen years, unless otherwise directed by the beneficiaries with the approval of the grantor, if living, and after the period of accumulation the net income was distributable in equal shares to the beneficiaries so long as they lived. The principal or corpus was distributable upon termination of the trust, alternatively to the three children, their issue and the issue of the grantor. The trust was terminable at any time by the three beneficiaries, with approval of the grantor, if living, and terminated in any event upon the death of the survivor of the three beneficiaries. It was provided that the trust instrument might be altered, changed or modified in any manner and to any extent by the three beneficiaries, with approval of the grantor, if living. (R. 19–25, 54–60.)

As authorized three amendments dated June 19, 1919, December 1, 1920, and December 6, 1920, were made to the trust instrument by the beneficiaries,

with approval of the grantor. The first provided that the trust estate be divided into three separate and equal parts or shares, one for each beneficiary, to which undivided interests in the whole or any part of the estate might be assigned, all additions to the estate to be divided among the separate trust estates in equal shares; that the net income from each trust (share) be paid to the beneficiary entitled thereto when a majority of the beneficiaries so requested in writing, with provision for distribution of the share of any deceased beneficiary; and that the principal be distributed upon termination of the trusts substantially as provided in the original deed. The second amendment provided for distribution of income upon request of a majority of the beneficiaries, with the proviso that equal amounts must be distributed to each. The third amendment extended the authority of the trustees to the sale, leasing and improvement of any real estate held in trust, but no change in investments could be made without the direction or approval of two of the beneficiaries, and further provided that the trust funds and estate should be kept divided into three equal parts, each to be held and administered as a separate trust for the beneficiaries respectively. Provisions for distribution of income and principal were made substantially as provided for formerly. R. 26–39, 61–74.)

Prior to the amendment of June 19, 1919, the trustees kept their accounts as a single trust for three beneficiaries and after that date the capital

account was divided into three equal parts and one assigned to each original beneficiary for whom a separate account was kept from that date. (R. 85.) The trust property in June, 1919, consisted of stocks, real estate, and cash. There was not at any time an actual division of the trust assets or property among the beneficiaries, but separate accounts were maintained and an undivided one-third interest in each item of property, regardless of when acquired, was assigned to the account of each beneficiary. No particular certificates of stock, no particular parcels of real estate, and no segregated amount of cash were distributed to the respective accounts of the three original beneficiaries. Each beneficiary was assigned an undivided interest in each item of trust property. Income received from the trust property was divided and carried in equal amounts to the beneficiaries' accounts. The stocks and securities were held in the names of the trustees as such under the original deed or in the name of their nominee. The real estate was held in the names of the trustees, originally as joint tenants and later as trustees, and after the amendments to the deed of trust no new declarations were made that the real estate was held for three separate trust estates. Other than the establishment of three separate accounts on the books to which equal undivided interests were assigned after the June, 1919, amendment, the trustees treated the estate or property as held in one trust. The trustees at all times kept only one bank

account, into which all receipts of cash went and from which all disbursements of cash were made. (R. 87, 88–93, 95–96.)

The amendments to the trust deed were made for the purpose of identifying the interests of the respective beneficiaries in the event of the death of any beneficiary and also for the purpose of reducing the taxes on undistributed income from trust property to be accumulated, by having the same taxed as income of three separate trust estates or entities rather than as income of one trust or entity. (R. 93–94.)

For the years 1924 to 1928, inclusive, the trustees filed separate fiduciary and income-tax returns for each beneficiary, on the theory of there being three separate trust estates. The gross income, deductions, and tax liability of each beneficiary for each year as shown on the returns were the same in amount. The Commissioner, upon audit of the returns, determined that there was but one trust estate held for three beneficiaries and the income from all the property is taxable as a unit to the one trust. (R. 15–16, 52–53, 117–147.)

The single issue submitted to the Board of Tax Appeals was whether the income derived from the trust property during the taxable years and not distributed or distributable to the beneficiaries is taxable on the basis of a single trust or of three separate trusts. (R. 78.) The Board of Tax Appeals sustained the taxpayers, holding that the income

should be taxed on the basis of three separate trusts and returns and accordingly found no deficiency in tax. (R. 158–159.) The Circuit Court of Appeals affirmed.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the deed of trust as amended created three separate trust estates and entities and that the undistributed and undistributable income from the trust property is taxable to each trust estate according to the amount assigned thereto.

2. In not holding that under the deed of trust as amended there was a single trust estate to which all the undistributed and undistributable income from all trust property is taxable.

3. In deciding that there is no deficiency in tax for each of the taxable years.

4. In refusing to decide that there is a deficiency in tax for each year in the respective amounts stipulated by the parties.

REASONS FOR GRANTING THE WRIT

This case presents the identical question involved in *United States Trust Company of New York, Trustee Under Deed of Trust of John P. Wilson* v. *Helvering, Commissioner,* now pending in this Court, No. 169, October Term, 1935, on certiorari to the Circuit Court of Appeals for the Second Circuit. That case involves the construction of cer-

tain amendments, similar to those here involved, to another deed of trust by the same grantor and for the same beneficiaries as here involved. In the ~~New York~~ *Trust Company* case, as here, there was created by the original deed a single trust estate for the equal benefit of the grantor's three children who were authorized to amend, alter, modify or change the deed in any way, subject only to the approval of the grantor, if living. Amendments were made, as authorized, which in all material respects were substantially like, and to the same effect as, the amendments made in the instant case. The Circuit Court of Appeals for the Second Circuit held that there was but one trust and taxable entity after as well as before the amendments.

The petition for certiorari in the *United States Trust Company* case was opposed by us on the ground that, while the two Circuit Courts of Appeals reached opposite conclusions on the same question from substantially similar facts, both cases involve merely the construction of certain written instruments. Among other reasons assigned for granting the writ, the petitioner alleged there that the *United States Trust Company* case is in conflict with the instant case. This Court on October 14, 1935, granted the petition for certiorari in the *United States Trust Company* case.

Inasmuch as the identical question here presented is now before the Court in the *United States Trust Company* case, which is alleged to be in conflict with the instant case, the petition in this case

should be granted to the end that the interests of the Government may be protected and there may be before the Court for review both cases in which the alleged conflict arises.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

OCTOBER, 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935

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No. 566

In the Supreme Court of the United States

OCTOBER TERM, 1935

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, PETITIONER

v.

WILLIAM B. McILVAINE AND JOHN P. WILSON, JR., TRUSTEES UNDER DEED OF TRUST OF JOHN P. WILSON

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

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In the Supreme Court of the United States

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GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

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WILLIAM B. MCILVAINE AND JOHN P. WILSON, JR., Trustees under Deed of Trust of John P. Wilson

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the United States Board of Tax Appeals (R. 149) is reported in 29 B. T. A. 304. The opinion of the Circuit Court of Appeals (R. 172) is reported in 78 F. (2d) 787.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered July 19, 1935. (R. 177.) Upon motion of the petitioner, this Court by Mr. Justice

Van Devanter extended the time for filing a petition for certiorari to and including November 1, 1935. (R. 178.) Petition for writ of certiorari was filed November 1, 1935, and was granted November 11, 1935. (R. 179.) The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

A deed creating a single trust for the equal benefit of three beneficiaries was amended to divide the trust estate into three equal parts or shares. A separate account was set up for each beneficiary and an undivided one-third interest in the aggregate trust estate was assigned to each account. Did the amendments create three separate and independent trusts, to which proportionate amounts of the income from the property are separately taxable, or did the original single trust continue as such, to which all the income from the property is taxable?

STATUTES INVOLVED

Revenue Act of 1928, c. 852, 45 Stat. 791, 833, 838:

> SEC. 143. FIDUCIARY RETURNS.
>
> (a) *Requirement of return.*—Every fiduciary (except a receiver appointed by authority of law in possession of part only of the property of an individual) shall make under oath a return for any of the following individuals, estates, or trusts for which he

acts, stating specifically the items of gross income thereof and the deductions and credits allowed under this title—

* * * * *

(4) Every estate or trust the net income of which for the taxable year is $1,500 or over;

(5) Every estate or trust the gross income of which for the taxable year is $5,000 or over, regardless of the amount of the net income; * * *

SEC. 161. IMPOSITION OF TAX.

(a) *Application of tax.*—The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, * * *.

* * * * *

(b) *Computation and payment.*—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in section 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor). For return made by beneficiary, see section 143.

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

The material provisions of the Revenue Acts of 1924, c. 234, 43 Stat. 253, and 1926, c. 27, 44 Stat.

9, are found in Sections 219 and 225 and are substantially identical with the quoted provisions of the Revenue Act of 1928.

STATEMENT

By deed dated March 19, 1913, John P. Wilson transferred certain stocks and securities to the respondents in trust for the equal benefit of his three children, John P. Wilson, Jr., Martha Wilson, and Anna W. Dickinson. The trustees were authorized to receive all income, to sell the property and reinvest the proceeds as well as undistributed income, but only in accordance with the written directions of two of the beneficiaries. The net income was to be accumulated for fifteen years, unless otherwise directed by the beneficiaries with the approval of the grantor, if living, and after the period of accumulation the net income was to be distributed in equal shares to the beneficiaries so long as they lived. The principal or corpus was to be distributed upon termination of the trust, alternatively, to the three children, their issue, or the issue of the grantor. The trust was terminable at any time by the three beneficiaries, with approval of the grantor, if living, and was to be terminated in any event upon the death of the survivor of the three beneficiaries. It was provided that the trust instrument might be altered, changed, or modified in any respect and to any extent by the three beneficiaries, with approval of the grantor, if living. (R. 19–25.)

Three amendments dated, respectively, June 19, 1919, December 1, 1920, and December 6, 1920, were made to the trust instrument by the beneficiaries, with approval of the grantor. The first provided that the trust estate be divided into three separate and equal parts or shares, one for each beneficiary, to which undivided interests in the whole or any part of the estate might be assigned, all additions to the estate to be divided among the separate trust estates in equal shares; that the net income from each trust be paid to the beneficia , entitled thereto when a majority of the beneficiaries so requested in writing, with provision for distribution of the share of any deceased beneficiary; and that the principal be distributed upon termination of the trusts substantially as provided in the original deed. (R. 26–29.) The second amendment provided for distribution of income upon request of a majority of the beneficiaries, with the proviso that equal amounts must be distributed to each. (R. 29–33.) The third amendment extended the authority of the trustees to the sale, leasing, and improvement of any real estate held in trust, but no change in investments could be made without the direction or approval of two of the beneficiaries, and further provided that the trust funds and estate should be kept divided into three equal parts, each to be held and administered as a separate trust for the beneficiaries respectively. Provisions for distribution of income and principal were made substantially as provided for formerly. (R. 33–39.)

Prior to the amendment of June 19, 1919, the trustees kept their accounts as a single trust for three beneficiaries and after that date the capital account was divided into three equal parts and one assigned to each original beneficiary, for whom a separate account was kept from that date. (R. 154–155.) The trust property in June, 1919, consisted of stocks, real estate, and cash. There was not at any time an actual division of the trust assets or property among the beneficiaries, but separate accounts were maintained and an undivided one-third interest in each item of property, regardless of when acquired, was assigned to the account of each beneficiary. No particular certificates of stock, no particular parcels of real estate, and no segregated amount of cash were distributed to the respective accounts of the three original beneficiaries. Each beneficiary was assigned an undivided interest in each item of trust property. Income received from the trust property was divided and carried in equal amounts to the beneficiaries' accounts. The stocks and securities were held in the names of the trustees as such under the original deed, or in the name of their nominee. The real estate was held in the names of the trustees, originally as joint tenants and later as trustees, and after the amendments to the deed of trust no new declarations were made that the real estate was held for three separate trust estates. Other than the establishment of three separate accounts on the books to which equal undi-

vided interests were assigned after the June, 1919, amendment, the trustees treated the estate or property as held in one trust. The trustees at all times kept only one bank account, into which all receipts of cash went and from which all disbursements of cash were made. (R. 154–155.)

The amendments to the trust deed were made for the purpose of identifying the interests of the respective beneficiaries in the event of the death of any beneficiary, and also for the purpose of reducing the taxes on undistributed income from trust property to be accumulated by having the same taxed as income of three separate trust estates or entities rather than as income of one trust or entity. (R. 93–94.)

For the years 1924 to 1928, inclusive, the trustees filed separate fiduciary and income-tax returns for each beneficiary, on the theory of there being three separate trust estates. The gross income, deductions, and tax liability of each beneficiary for each year as shown on the returns were the same in amount. The Commissioner, upon audit of the returns, determined that there was but one trust estate held for three beneficiaries and that the income from all the property is taxable as a unit to the one trust. (R. 155.)

The single issue submitted to the Board of Tax Appeals was whether the income derived from the trust property during the taxable years and not distributed or distributable to the beneficiaries is tax-

able on the basis of a single trust or of three separate trusts. (R. 78.) The Board of Tax Appeals sustained the taxpayers, holding that the income should be taxed on the basis of three separate trusts and returns and accordingly found no deficiency in tax. (R. 159.) The Circuit Court of Appeals affirmed.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the deed of trust as amended created three separate trust estates and entities and that the undistributed and undistributable income from the trust property is taxable to each trust estate according to the amount assigned thereto.

2. In not holding that under the deed of trust as amended there was a single trust estate to which all the undistributed and undistributable income from all trust property is taxable.

3. In deciding that there is no deficiency in tax for each of the taxable years.

4. In refusing to decide that there is a deficiency in tax for each year in the respective amounts stipulated by the parties.

ARGUMENT

This case presents the identical question involved in *United States Trust Company of New York, Trustee Under Deed of Trust of John P. Wilson* v. *Helvering, Commissioner,* now pending in this Court, No. 169, October Term, 1935, on certiorari

to the Circuit Court of Appeals for the Second Circuit. That case involves the construction of certain amendments, similar to those here involved, to another deed of trust by the same grantor and for the same beneficiaries as here involved. In the *United States Trust Company* case, as here, there was created by the original deed of trust a single trust estate for the equal benefit of the grantor's three children who were authorized to amend, alter, modify or change the deed in any way, subject only to the approval of the grantor, if living. Amendments were made, as authorized, which in all material respects were substantially like and to the same effect as the amendments made in the instant case. The Circuit Court of Appeals for the Second Circuit held that there was but one trust and taxable entity after as well as before the amendments.

The question here presented is now before the Court in the *United States Trust Company* case, which on its facts does not differ materially from the instant case. Although the provisions for division of the trust estate into three "separate and equal parts or shares" are the same in the first amendments to each of the deeds of trust, here the first amendment, as well as the second and third amendments, speaks of "separate trust estates" (R. 27). On the other hand, the first amendment to the deed of trust in this case makes provision for the division of income in equal shares or parts, "except and unless it shall be otherwise directed

in the instrument of gift making an addition to the *trust estate* held under said indenture." (Italics supplied, R. 27.) It is believed that neither variation, each pointing to a contrary conclusion, makes any substantial difference in the determination of whether the original trust estate continued or has been divided into three separate trust estates. The petitioner, therefore, in the interest of brevity, adopts and incorporates herein by reference the argument presented in the brief filed on behalf of the respondent in *United States Trust Co. of New York, Trustee Under Deed of Trust of John P. Wilson* v. *Helvering, Commissioner, supra.*

CONCLUSION

We respectfully submit that the decision of the court below was erroneous and should be reversed.

STANLEY REED,
Solicitor General,
FRANK J. WIDEMAN,
Assistant Attorney General,
SEWALL KEY,
J. LOUIS MONARCH,
BERRYMAN GREEN,
Special Assistants to the Attorney General.

DECEMBER, 1935.

U. S. GOVERNMENT PRINTING OFFICE: 1935

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 566

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

vs.

WILLIAM B. McILVAINE AND JOHN P. WILSON, JR., TRUSTEES UNDER DEED OF TRUST OF JOHN P. WILSON,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

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THE DONNELLEY-LAKESIDE PRINTING COMPANY, 350 WEST JACKSON, CHICAGO

IN THE

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 566.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE,

Petitioner,

vs.

WILLIAM B. McILVAINE AND JOHN P. WILSON, JR., TRUSTEES UNDER DEED OF TRUST OF JOHN P. WILSON,

Respondents.

ON WRIT OF CERTIORATI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR RESPONDENTS.

The brief for petitioner sufficiently describes the opinions below, the basis of the jurisdiction of this Court, the question presented, and the statutes involved. It also states the facts with sufficient accuracy and detail for the consideration of this case.

ARGUMENT.

The petitioner states that this case presents the identical question involved in *United States Trust Company of New York, Trustee Under Deed of Trust of John P. Wilson,* v. *Helvering, Commissioner,* now pending in this Court, No. 169, October Term, 1935, on certiorari to the Circuit Court of Appeals for the Second Circuit.

Respondents agree that the same question is presented in both cases, namely, whether there is one trust or three trusts, and that there is no material difference in the facts presented or in the documents to be interpreted by the Court.

Respondents therefore adopt and incorporate herein by reference the arguments presented in the petition for writ of certiorari, the brief in support thereof, and the reply brief on the merits filed on behalf of petitioner in *United States Trust Company of New York, Trustee under Deed of Trust of John P. Wilson,* v. *Helvering, Commissioner, supra.*

Respondents only desire to add one comment in this brief. It is the viewpoint of respondents that these two cases are substantially identical in every respect. They were also considered to be substantially identical by the Circuit Court of Appeals for the Seventh Circuit in the instant case.

The Government in its last brief in the United States Trust Company case, bases its argument in large part on the fact that the first amendment to the trust indenture in that case, which first divided the single trust estate, did not accomplish a separation of the estate into three trusts because it did not actually contain the words "which trust estates" or "the three estates", but used instead

the words "parts or shares". That argument can have no application to the instant case. The first amendment here contained a paragraph identical in phraseology with that appearing in the first amendment in the United States Trust Company case with respect to the division of the trust estate into separate parts or shares. The first amendment here, however, included other paragraphs which repeatedly contained phrases such as "the separate trust estates", "said separate trust estates", "the three trust estates", etc. The argument made on this point by the Government in the United States Trust Company case can not be made here.

We again repeat that in the view of respondents there is no substantial distinction between the two cases. Respondents believe that in both cases the language used in the amended instruments is plain and clearly expresses the intention of the parties to create separate trusts. Since Congress has seen fit to tax the accumulations in separate trusts separately, they must be so taxed, both in the United States Trust Company case and in the instant case.

Respectfully submitted,

CLAY JUDSON,
Counsel for Respondents.

WILSON & MCILVAINE,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 566.—October Term, 1935.

Guy T. Helvering, Commissioner of Internal Revenue, Petitioner,
vs.
William B. McIlvaine and John P. Wilson, Jr., Trustees under deed of trust of John P. Wilson.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[January 6, 1936.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

The question presented in this case is similar to that involved in *United States Trust Company* v. *Commissioner*, No. 169, decided this day. *Ante*, p. —. By amendments under a reserved power, the terms of an original trust created by John P. Wilson, in 1913, were altered with the intention of creating three separate trusts. The Board of Tax Appeals, upon findings supported by evidence, concluded that this purpose was accomplished and hence that there was no deficiency. 29 B. T. A. 304. The Circuit Court of Appeals affirmed the order of the Board. 78 F. (2d) 787. We granted certiorari because of the conflict with the decision of the Circuit Court of Appeals for the Second Circuit, in the case of the *United States Trust Company, supra*, (75 F. (2d) 973) and, for the reasons stated in our opinion in that case, the decree of the Circuit Court of Appeals is affirmed.

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.